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Hercules Unchained: A Simplified Approach to Wiretap, Investigative Monitoring, and Eavesdrop Activity

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Introduction

Electronic surveillance of underworld activity is readily recognized by law enforcement officers and lay persons alike as a useful, if not invaluable, investigative technique. Unfortunately, the application of wiretap, investigative monitoring and eavesdrop activity (W.I.M.E.A.) in the military has by and large laid dormant for two reasons. Perhaps the most significant force inhibiting development of the technique has been the intricate maze of administrative requirements that envelop the area.[1] Thus, criminal investigators faced with a

[1]The practice of law within the field of W.I.M.E.A. is particularly foreboding due to the multiple layers of constitutional, statutory, regulatory and decisional authority which control. At the base of the pyramid is the fourth amendment. Federal practice under 18 U.S.C. §§ 2510-2520 (1976), has been incorporated by reference by, among other authorities, the Manual for Courts-Martial, United States, 1969 (Rev. ed.) [hereafter cited as MCM, 1969], chapter XXVII, the Military Rules of Evidence [hereinafter cited as Mil. R. Evid.]. In and of themselves, 18 U.S.C. §§ 2510-2520 have no legal efficacy outside the territorial jurisdiction of the United States. *See Stowe v. Devoy*, 588 F.2d 336, 341 (2d Cir. 1978); *United States v. Cotroni*, 527 F.2d 708, 711 (2d Cir. 1975); *United States v. Toscanino*, 500 F.2d 267,

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perceived overwhelming administrative burden are reticent to act. To a lesser degree, the nature of criminal conduct within military society also serves to detract from the use of the investigative aid. Not being confronted with organized crime on a regular basis, military police do not find the strategem necessary for effective and efficient crime detection and prevention.

Nevertheless, the use of this investigative tool of modern technology can be immensely rewarding in fighting crime. On occasion, judge advocates must advise investigators on the viability of the employment of W.I.M.E.A. In other settings, counsel are faced with the legality of its use after the fact. No matter what circumstance impels the military attorney to refer to and to apply this facet of the law, two things are certain. First, just as with any other consideration of fourth amendment[2] jurisprudence, counsel must have a rational scheme for approaching and resolving the problem. Second, the practitioner must be conversant with a number of concepts unique to this area.

It is the purpose of this examination to unveil the mysteries that shroud investigatory monitoring activities. A simple and clear analytical framework will permit trial and defense counsel alike to resolve questions in the area correctly and quickly. Moreover, a number of procedures which permeate the field will be amplified through the definition of terms and analysis of judicial decisions that deal with them. Two constraints are inherent to the scope of this examination. Only wiretapping,

(Footnote, continued)

279 (2d Cir. 1974); Berlin *Democratic Club v. Rumsfeld*, 410 F. Supp. 144, 157 fn. 6 (D.D.C. 1976). Additionally, the Army attorney must understand the implications of Department of Defense Directive No. 5200.24, Interception of Wire and Oral Communications for Law Enforcement Purposes (April 3, 1978); Army Reg. No. 190-53, Military Police Interception of Wire and Oral Communications for Law Enforcement Purposes (1 November 1978) [hereinafter cited as AR 190-53]; and Trial Judge Memorandum 1-79 (10 January 1979) [hereinafter cited as TJM No. 1-79]. Additionally, counsel must be sensitive to judicial pronouncements as well as the influence of foreign law in the overseas situation.

[2] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." The essence of electronic eavesdropping is the governmental 'seizure' of conversations in which one or more of the parties have a legitimate expectation of privacy. *See generally Berger v. New York*, 388 U.S. 41 (1967).

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bugging,[3] and similar interception methods will be considered while pen register and tracing[4] devices will not.[5] In addition, the main thrust of the survey is limited to nonconsensual interceptions.[6]

Methodology

Only a logical approach to the resolution of the W.I.M.E.A. problem offers the hope of an expeditious and accurate legal assessment. The order in which components of the problem are considered is important because they support each other as the walls in a house of cards. Just as a weak foundation will cause a house of cards to tumble, so will an improper finding in any of the following sequence of questions rule out the use of electronic surveillance.

A. Is the offense under consideration amenable to W.I.M.E.A.?

Only certain offenses may be the subject of investigation depending on the way in which two factors combine—the place where the investigation is to take place and whether consent[7] is involved.

In the United States[8] "[n]onconsensual interception of wire and oral communications is prohibited unless there exists *probable cause* to believe that . . . a criminal offense listed in 18 U.S.C. §2516(1) has been, is being, or is about to be committed."[9] (emphasis supplied)

[3] "[W]iretapping," . . . is confined to the interception of communication by telephone and telegraph and generally may be performed from outside the premises to be monitored . . . . "[B]ugging" . . . includes the interception of all oral communication in a given location. Unlike wiretapping, this interception typically is accomplished by installation of a small microphone in the room to be bugged and transmission to some nearby receiver." [citations omitted] *Dalia v. United States*, 47 U.S. L.W. 4423 n.1 (U.S. Apr. 18, 1979) (No. 77-1722).

[4] AR 190-53, paras. 1-3h and i define pen register and telephone tracing as follows:

> *Pen register.* A device connected to a telephone instrument or line that permits the recording of telephone numbers dialed from a particular telephone instrument. "Pen register" also includes decoder devices used to record the numbers dialed from a touch-tone telephone. "Pen register" does not include equipment used to record the numbers dialed for and duration of long-distance telephone calls when the equipment is used to make such records for an entire telephone system and for billing or communications management purposes.
>
> *Telephone tracing.* A technique or procedure to determine the origin, by telephone number and location, of a telephone call made to a known telephone instrument. The terms "lockout" and "trapping" may also be used to describe this technique.

[5] The administrative burden which must be adhered to by military law enforcement officers is considerably less onerous. *See* Ar 190-53, chaps. 3 and 4. Moreover, juridical scrutiny of these techniques has determined them to be without the protections of the fourth amendment. *See Smith v. Maryland*, 47 U.S.L.W. 4779 (U.S. Jun. 20, 1979) (No. 78-5374).

[6] A "consensual interception" is defined by AR 190-53, para. 1-3c, as "[a]n interception of a wire or oral communication after verbal or written consent for the interception is given by one or more of the parties to the communication." It is not as difficult to acquire authorization to conduct investigative activity of this nature as in a nonconsensual situation. All that is required is executive approval. *See* AR 190-53, para. 2-5. Thus, the administrative requirements are less demanding.

[7] *See* fn. 6, *supra*.

[8] "United States" is defined by AR 190-53, para 1-3j, to include "the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States."

[9] AR 190-53, para. 1-4*d*(1). 18 U.S.C. § 2516(1) lists the following offenses as being susceptible to eavesdrop activity:

> (a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the atomic Energy Act of 1954), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), or chapter 102 (relating to riots);
>
> (b) a violation of section 186 or section 501(c) of title 29, United States Code (dealing with restrictions on payments and loans to Labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;
>
> (c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h) or (i) of section 844 (unlawful use of explosives), section 1084 (transmission of wagering information), section 1503 (influencing or injuring an officer,

A nonconsensual intercept overseas can be sustained, when there is probable cause to believe there has been, is being, or is about to be carried out a violation of the Uniform Code of Military Justice that is ". . . dangerous to life, limb, or property, and punishable by death or confinment for 1 year or more."[10] Consensual interceptions, whether in the United States or overseas, provide the broadest leeway. There are more foundational offenses and they are unhampered by the need to demonstrate probable cause.[11]

It is evident that the foundation to the house of cards must consist of an appropriate offense. The absence of a proper footing immediately precludes the use of W.I.M.E.A. as a law enforcement aid.

B. Has the use of other investigative techniques been exhausted?

Before undertaking an investigative program using electronic devices, the feasibility of more conventional law enforcement methods must be considered. The well known analogue of this requirement in administrative law is the doctrine of exhaustion of administrative remedies.[12]

Although a detailed examination of the implications of this requirement will be undertaken

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juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential assassinations, kidnapping and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 659 (theft from interestate shipment), section 664 (embezzlement from pension and welfare funds), sections 2314 and 2315 (interstate transportation of stolen property) section 1963 (violations with respect to racketeer influenced and corrupt organizations) or section 351 (violations with respect to congressional assassination, kidnapping and assault);

(d) any offense involving counterfeiting punishable under sections 471, 472, or 473 of this title;

(e) any offense involving bankruptcy fraud or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title; or

(g) any conspiracy to commit any of the foregoing offenses.

[10] AR 190-53, para. 1-4d(2)(b). The remaining parts of para. 1-4d(2) provide additional bases as follows:

> (a) The offense of murder, kidnapping, gambling, robbery, bribery, extortion, espionage, sabotage, treason, fraud against the Government, or dealing in narcotic drugs, marihuana, or other dangerous drugs.
>
> . . . .
>
> (c) Any conspiracy to commit any of the foregoing offenses. Similarly, para. 1-4d(3) provides a broad range of offenses:
>
> In the case of other interceptions abroad, one of the following offenses has been, is being, or is about to be committed:
>
> (a) An offense listed in 18 U.S.C. §2516(1).
>
> (b) Fraud against the Government or any other offense dangerous to life, limb or property and punishable under Title 18 of the United States Code by death or confinement for more than 1 year.
>
> (c) Any conspiracy to commit any of the foregoing offenses.

[11] AR 190-53, para. 1-4e, provides:

> Consensual interceptions of wire and oral communications shall be undertaken only when at least one of the parties to the conversation has consented to the interception and when the investigation involves:
>
> (1) A criminal offense punishable, under the United States Code or UCMJ, by death or confinement for 1 year or more.
>
> (2) A telephone call involving obscenity, harassment, extortion, bribery, bomb threat, or threat of bodily harm that has been made to a person authorized to use the telephone of a subscriber-user on an installation, building, or portion thereof, under DOD jurisdiction or control, and when the subscriber-user has also consented to the interception.

[12] "The doctrine is that, where an administrative remedy is provided by statute, relief must be sought from administrative body and such remedy exhausted before courts will act," Black's Law Dictionary 682 (4th ed. 1951) *See also Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41 (1938); McKart v. United States, 395 U.S. 185 (1969).

below, suffice it to state presently, that other investigative techniques must have been contemplated or tried, and found lacking. It is of no import that the activity in question is being pursued under 10 U.S.C. § 2518 or Army regulation. Both authorities incorporate similar provisions.[13] There is a general abhorrence for using this most intrusive of governmental activities.[14] Hence, if it is possible to perfect a criminal investigation in a more traditional manner, this course of action is preferred. "Normal investigative procedure would include, for example, standard visual or aural surveillance techniques by law enforcement officers, general questioning or interrogation under an immunity grant, use of regular search warrants, and the infiltration of conspiratorial groups by undercover agents or informants."[15]

C. Is the administrative procedure which is being followed to obtain the intercept authorization legally sufficient?

It is incumbent, on those persons involved in seeking electronic intercept authorizations, more than ever before, to closely follow the administrative guidelines that have been established. The failure to do so can result in the suppression of the fruits of the activity.[16] Therefore, attention to detail is the key to success.

Two notions must be evaluated before selecting the appropriate administrative procedure. These are questions relating to consent and to the geographical setting of the activity.

A consensual activity, irrespective of location, presents limited administrative restrictions: "An application for a court interception order or a court interception order is not necessary in this situation."[17] The only requirement, which must be adhered to in these circumstances, is *written* approval of one of four designated individuals. These officials are the Secretary of the Army, the Under Secretary of the Army, the Army General Counsel or, when the foregoing are not present, the DoD General Counsel.[18]

The nonconsensual situation presents a more complicated scheme. There is a divergence in action depending on the location of the investigation. Additionally, the process involves three distinct steps, each of which has its own pitfalls.

1. Request for Authorization.

Before a requesting official may attempt to solicit a judicial warrant or authorization,[19] the

[13] *Compare* 18 U.S.C. § 2518(1)(c):

> a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

with AR 190-53, para. 1-4c:

> Interception of wire and oral communications is a special technique which shall not be considered as a substitute for normal investigative procedures and shall be authorized only in those circumstances where it is demonstrated that the information is necessary for a criminal investigation and cannot reasonably be obtained in some other, less intrusive manner.

This provision is further refined within para. 2-1a(3). It is explained to mean:

> A statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

[14] *See generally*, American Bar Association Standards Relating to the Administration of Criminal Justice, Electronic Surveillance.

[15] [1968] U.S. Code, Cong. & Ad. News 2190.

[16] *See United States v. Dillard*, 8 M.J. 213 (C.M.A. 1980); Mil. R. Evid. 317; AR 190-53, para. 2-2a(9). *But see* United States v. Caceres, 47 U.S.L.W. 4349 (U.S. Apr. 2, 1979) (No. 76-1309). United States v. Holsworth, 7 M.J. 184 (C.M.A. 1979).

[17] AR 190-53, para. 2-5(2). Moreover, 18 U.S.C. §§ 2510-20 (1976), has no application to the situation where one of the parties to the conversation consents to the interpretation. *see* [1968] U.S. Code Cong. & Ad. News 2182.

[18] AR 190-53, para. 2-5(2).

[19] Mil. R. Evid. 315(b)(1) and (2) differentiate between a warrant and authorization. The former is issued by a civilian authority whereas the latter is issued by a military member. A military authorization is issued by either a military judge or commander. For the purposes

individual must obtain permission to do so from a designated authority. Unlike an application for a search warrant, direct action cannot immediately be taken. Where the interception is to take place overseas, only the DoD General Counsel, or a single designee, may grant preliminary permission to approach a judicial officer.[20] In the United States, permission must be secured from officials of *both* the Department of Defense and the Department of Justice.[21] The information that must be provided in the Request for Authorization is straightforward. A clear, detailed explanation is provided in AR 190-53.[22] It essentially causes the law enforcement officers seeking the authorization to demonstrate that statutory requirements can be fulfilled, and hence, the proposed action is legally sufficient.

2. Application for Court Order.

After receiving permission to pursue a court order, the next step is to make a request to the correct judicial official. In the United States'[23] application must be made ". . . to a federal judge of competent jurisdiction . . . ."[24] Abroad, the situation is somewhat more complex.

Military judges overseas are the sole individuals authorized to issue legal intercept orders.[25] The regulation provides that "[o]nly military judges assigned by The Judge Advocate General of the Army to receive applica-

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of this discourse the terms will be used interchangeably.

[20] Mil. R. Evid. 317(c)(2); AR 190-53, para. 2-1b. It should be noted that the Request for Authorization is not forwarded directly to this authority. Depending on the agency requesting permission and the nature of the underlying offense various administrative channels are established. *See* AR 190-53, para. 2-1a and b. Furthermore, when the investigation transpires overseas and the focus of the activity is an individual who is not subject to the Uniform Code of Military Justice, AR 27-10, para. 2-2b(2), requires the DOD General Counsel to ". . . determine what further approval is required by law to conduct the interception."

[21] *See* AR 190-53, para. 2-1c and Mil. R. Evid. 317(b). 18 U.S.C. § 2516(1) provides:

> "The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction . . . ."

[22] AR 190-53, para. 2-1a, provides that each Request for Authorization contain the following information:

> (1) The identity of the MACOM investigative or law enforcement official making the application.
>
> (2) A complete description of the facts and circumstances relied upon by the applicant to justify the intended interception, including:
>
> (a) The particular offense that has been, is being, or is about to be committed.
>
> (b) A description of the type of communication sought to be intercepted with a statement of the relevance of that communication to the investigation.
>
> (c) A description of the type of communication sought to be intercepted with a statement of the relevance of that communication to the investigation. (sic)
>
> (d) The identity of the person, if known, committing the offense and whose communications are to be intercepted.
>
> (3) A statement as to whether other investigative procedures hae been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.
>
> (4) An identification of the type of equipment to be used to make the interception.
>
> (5) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the interception will not terminate automatically when the described type of communication has been first obtained, a description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.
>
> (6) The procedures to minimize the acquisition, retention, and dissemination of information unrelated to the purpose of the interception.
>
> (7) A complete statement of the facts concerning each previous application for approval of interceptions of wire or oral communications known to the applicant and involving any of the same persons, facilities or places specified in the application and the action taken thereon.
>
> (8) When the application is for an extension of an order, a statement setting forth the results thus far obtained from the interception, or an explanation of the failure to obtain such results.

[23] *See* fn. 8 *supra*.

[24] Mil. R. Evid. 317(b); AR 190-53, para. 2-1c.

[25] Mil. R. Evid. 317(c); AR 190-53; paras. 1-6f and 2-2a(3).

tions for intercept authorization orders shall have the authority to issue such orders."[26] The Judge Advocate General of the Army has authorized all military judges assigned to the Trial Judiciary to act in these matters.[27] However, the authorizing judge must be one who normally serves the area or installation where the activity is contemplated[28] and must have received approval from his or her Chief Circuit Judge.[29]

Once the correct forum is selected attention must be focused to the content and form of the request. The means of acting is the same irrespective of who the issuing officer is. Both Army regulation[30] and the federal criminal code[31] demand that the information delineated at 18 U.S.C. §2518(1) be provided to the appropriate judicial officer.[32]

When the foregoing matters are resolved the third step in the approval process is ready to be undertaken. It is a step solely within the control of the impartial reviewer.

3. Judicial Decision.

The evaluation processes which must be adhered to in both the civilian and military judiciary are virtually identical. Two discrete steps are involved. Initially, the judge must make certain findings based on the circumstances presented. Thereafter, an order must be entered.

The required findings[33] bring about two results. First, they greatly curtail the use of

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[26] AR 190-53, para. 2-2a(3).

[27] T.J.M. No. 1-79, para. 2.

[28] T.J.M. No. 1-79, para. 5a.

[29] T.J.M. No. 1-79, para. 5b.

[30] AR 190-53, para. 2-2a(2).

[31] 18 U.S.C. §2516(1).

[32] 18 U.S.C. §2518(1) provides:

> Each application for an order authorizing or approving the interception of a wire or oral communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:
>
> (a) the identify of the investigative or law enforcement officer making the application, and the officer authorizing the application;
>
> (b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including(i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;
>
> (c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
>
> (d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;
>
> (e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and
>
> (f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

[33] *Compare* 18 U.S.C. § 2518(3) which provides that the following findings will be made:

> (a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;
>
> (b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
>
> (c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
>
> (d) there is probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be intercepted are being

W.I.M.E.A. as an investigative tool. Second, they require the issuing official to ensure the constitutional prerequisites of specificity are fulfilled by ". . . particularly describing the place to be searched, and the . . . things to be seized."[34]

In addition, military judges must make an additional finding not required of their civilian counterparts. Military judges must note that "[t]he interception will not violate the relevant Status of Forces Agreement or the applicable domestic law of the host nation."[35] Other than this condition both assessments bring about three probable cause determinations: that a particular individual is involved in an offense; that the investigative aid will help uncover evidence; and that a valid place or facility is being kept under surveillance.[36]

Once the statutory findings are made, an order which must contain certain information may issue. The judicial direction must contain certain information. Again, 18 U.S.C. § 2518(4) and its Army counterpart, paragraph 2-2a(5) are almost a matched set.[37] The only difference is the appearance in the codal provision of a discretionary judicial action which permits a federal judge to direct certain groups to furnish assistance to the agency on whose behalf the order will be issued.[38]

Implicit in the language adopted in both the statutory and regulatory provisions is the notion that the court's mandate be in writing. Although neither authority offers definitive guidance, adherence to the procedure used in other aspects of fourth amendment practice militate in favor of this avenue of practice.[39] Thus, a written instrument appears to be the soundest vehicle to use in setting down guidelines to be followed by law enforcement officials.

Consideration of the overall question of procedure is not complete without reflection of an emergency mechanism that may be applied within the United States or overseas. The Code provides that under limited circumstances certain law enforcement officers selected by the Attorney General or designated state officials may employ wiretap techniques without court

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used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

with AR 190-53, para. 2-2a(4), which is almost an exact replica.

[34] U.S. Const. amend. IV.

[35] AR 190-53, para, 2-2a(4)(e). *See* part III, *infra*. *But see* Mil. R. Evid. 315(h)(3).

[36] *See* 18 U.S.C. §2518(3)(a), (b), and (d), and AR 190-53, para. 2-2a(4)(a), (c), and (d).

[37] *Compare* 18 U.S.C. §2518(4):

> (a) the identity of the person, if known, whose communications are to be intercepted;
>
> (b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;
>
> (c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;
>
> (d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and
>
> (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

with AR 190-53, para. 2-2a(5).

[38] 18 U.S.C. §2518(4) provides in part:

> An order authorizing the interception of a wire or oral communication under this chapter shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicatnt at the prevailing rates.

[39] *See* 18 U.S.C. §§2518(8) and (9); Fed. R. Crim. P. 41; Army Reg. No. 27-10, Legal Services Military Justice, chap. 14 (November 1968). *Cf.* United States v. Ceraso, 355 F. Supp. 126 (M.D.PA. 1973).

approval.[40] Army Regulation 190-53 incorporates the codal enactment by reference,[41] but does not dispense with the need for the preliminary Request for Authorization.[42] The ability to use this pressure valve appears to be *de minimis*,[43] but knowledge of its existence is essential for that rare situation where its application may be in order.

D. Have law enforcement officials complied with statutory/regulatory requirements while carrying out the investigation?

The last relevant area for concern is the conduct of the investigative agents. Within this realm are any number of acts of misconduct that could bring into force the exclusionary rule.[44] Considered below are a number of limitations placed on law enforcement behavior throughout the course of an electronic probe Each control in the process is common to both the statutory and regulatory authorities applicable to the military. However, the government is not tied to these strictures in an inflexible manner. The guidelines provide broad boundaries to the conduct of government operation so as not to make adherence an intolerable burden that detracts from effective law enforcement.

1. Exhaustion of Other Investigative Techniques.

As indicated earlier, critical to the successful employment of W.I.M.E.A. techniques is the preliminary use or consideration of more routine investigative undertakings. The Supreme Court has explained the requirement to be ". . . simply designed to assure that wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime."[45] The precise question is what burden the government must shoulder in demonstrating the need for this ultimate investigative enterprise. The language which expresses this concept in the United States Code and Army regulation is identical. Incorporated in a civilian or military judge's finding, and the incipient stage of the military action, Request for Authorization, is the phraseology that other ". . . investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous."[46]

The government has alternative courses of action to fulfill this requirement. It may *either* try various methods and show they have actually failed, or may merely proffer a demonstration, through an evidentiary submission,

[40] 18 U.S.C. §§2518(7) provides in pertinent part:

> Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—
>
> (a) an emergency situation exists with respect to conspiratorial activities threatening the national security interest or to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing such interception can with due diligence be obtained, and
>
> (b) there are grounds upon which an order could be entered under this chapter to authorize such interception, may intercept such wire or oral communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur.
>
> It should be noted that only two types of criminal activity will give rise to the use of this authority. They are those involving national security and organized crime. Quaere: Does the provision encompass the requisite exigency to bring the section within the 'reasonable' clause of the fourth amendment? *See* [1968[U.S. Code Cong. & Ad. News 2193.

[41] AR 190-53, para. 2-3.

[42] *See* AR 190-53, para. 2-1.

[43] Research reveals only two cases where the emergency provisions of 18 U.S.C. §2518(7) is mentioned. In neither situation was its use properly justified. *See* United States v. Capra, 501 F.2d 267 (2d Cir. 1974), and Shingleton v. State, 39 Md. App. 527, 387 A.2d 1134 (1978).

[44] *See* section III, *infra*.

[45] United States v. Kahan, 415 U.S. 143, 153 n.12 (1974). *See also* United States v. Giordano, 416 U.S. 505

[46] *See* 18 U.S.C. §§2518(1)(c) and (3)(c), and AR 190-53, paras. 2-1a(3) and 2-2a(4)(b).

that other investigative means are likely to fail.[47] The different types of activities that investigators present to reviewing officials do not have to represent the universe of all potential techniques. ". . . [C]ourts will not invalidate a wiretap order simply because defense lawyers are able to suggest *post factum* some investigative technique that might have been used and was not."[48] Law enforcement agents may approach their presentation in a pragmatic way. "Merely because a normal investigative technique is theoretically possible, it does not follow that it is likely."[49]

The two-pronged approach in justifying the need for electronic surveillance has been illustrated by a number of federal cases. The following strategems were unsuccessfully attempted and served in whole or in part to support a proper W.I.M.E.A. authorization.

a. The victims, witnesses or informants refused to assist in law enforcement because of fear of the suspects of investigation or lack of propensity due to personal involvement in criminal undertakings themselves.[50]

b. Physical surveillance was not feasible because of the nature of the underlying criminal offense, *e.g.*, bookmaking.[51]

c. There was an inability to penetrate unusual conspiracy with undercover agents.[52]

Alternatively, a number of activities have been described by law enforcement officials to reviewing officers as having limited potential for success. Therefore, under specific circumstances described, the issuing judge did not require an attempt and failure at such investigative aids before authorizing the electronic surveillance requested. Examples of these types of actions were assertions that:

a. Records of the crime were physically unavailable due to nonexistence, destruction or incompleteness when seized, hence a warranted search would not prove useful.[53]

b. An attempt at penetration of the criminal organization under the circumstances would place the undercover agent in an inordinate amount of danger.[54]

c. Penetration of the furtive activity was exremely difficult if not impossible.[55]

d. Cost-efficiency considerations did not warrant undertaking other types of investigative activities.[56]

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[47] United States v. Clerkley, 556 F.2d 709, 715 (4th Cir. 1977).

[48] United States v. Hyde, 574 F.2d 856, 867 (5th Cir. 1978). *See also* United States v. Pachecho, 489 F.2d 554, 565 (5th Cir. 1974). The objective of 18 U.S.C. §2518(1)(c),

> ". . . is not to foreclose electronic surveillance until every other imaginable method of investigation has been unsuccessfully attempted, but simply to inform the issuing judge of the difficulties involved in the use of conventional techniques."

[49] [1968] U.S. Code Cong. & Ad. News, 2190.

[50] United States v. Kahan, 415 U.S. 143 (1974); United States v. Santora, 600 F.2d 1317 (9th Cir. 1979); United States v. Gerardi, 586 F.2d 896 (1st Cir. 1978); United States v. Santarpio, 560 F.2d 448 (1st Cir. 1977); United States v. Clerkley, 556 F.2d 709 (4th Cir. 1977); United States v. Feldman, 535 F.2d 1175 (9th Cir. 1976); *In re Dunn*, 507 F.2d 195 (1st Cir. 1974); United States v. Whitaker, 343 F.Supp. 358 (E.D. Pa. 1972).

[51] United States v. Martinez, 588 F.2d 1227 (9th Cir. 1978); United States v. Gerardi, 586 F.2d 896 (1st Cir. 1976); United States v. Santarpio, 560 F.2d 448 (1st Cir. 1977); United States v. Feldman, 535 F.2d 1175 (9th Cir. 1976); In re Dunn, 507 F.2d 195 (1st Cir. 1974); United States v. Esposito, 423 F. Supp. 908 (S.D. N.Y. 1976).

[52] United States v. Almonte, 594 F.2d 261 (1st Cir. 1979); United States v. Gerardi, 586 F.2d 896 (1st Cir. 1976); United States v. Hyde, 574 F.2d 856 (5th Cir. 1978).

[53] United States v. Kahan, 415 U.S. 143 (1974); United States v. Almonte, 594 F.2d 261 (1st Cir. 1979); United States v. Martinez, 588 F.2d 1227 (9th Cir. 1978); United States v. Gerardi, 586 F.2d 896 (1st Cir. 1978); United States v. Clerkley, 556 F.2d 709 (4th Cir. 1977).

[54] In re Dunn, 507 F.2d 195 (1st Cir. 1974).

[55] United States v. Almonte, 594 F2d 261 (1st Cir. 1979); United States v. Clerkley, 556 F.2d 709 (4th Cir. 1977).

[56] United States v. Robertson, 504 F.2d 289 (5th Cir. 1974).

In summation, legislative and judicial authority have provided the government with significant latitude in dispensing with the use of substitute methods of investigation. Although the information presented to the impartial reviewer should be factual, practice has, in fact, permitted law enforcement agents to rest heavily on conclusory assertions.[57] By the same token, judges have used wide degrees of discretion in deciding whether other investigative forms would produce informational results.[58]

2. Identification of Investigative Target.

Another requirement, incorporated within both codal and regulatory practice, is the necessity of providing information that results in a finding that a particular individual is the target of the surreptitious investigation. The language from all authorities is precisely the same. "The identity of the person, if known, committing the offense and whose communications are to be intercepted"[59] must be specified.

During the investigative process, members of the police team will normally develop and concentrate on a specific subject. The demand to divulge the identity of the suspect to the judge issuing the authorization provides additional fulfillment of the specificity requirement to the fourth amendment.[60] Nevertheless "[t]here is no broad naming requirement in the statute. The government is not required to name every person who might be recorded in the wire interception. To require a broader naming requirement would improperly expand the statute . . . ."[61] The language used by the legislative enactment has been interpreted in line with the plain meaning apparent on its face. Only those persons who investigators have probable cause to believe are involved in perpetrating a cognizable offense must be named.[62]

The statutory provision, and presumably its regulatory mirror image, are still not free from problems. Invariably, a criminal investigation starts off with a single suspect in mind. At the conclusion of it other members of the criminal milieu are caught up as the net is pulled in. This is particularly true with W.I.M.E.A. programs. The argument advanced by other accused is very simply, "why weren't we named in the application or order for a wiretap?"

The Supreme Court was quite clear in its interpretation of the identification requirements. The government was not, required to conduct a thorough investigation into a criminal transaction before applying for an eavesdrop order. To require police to act in such a manner ". . . would greatly subvert the effectiveness of the law enforcement mechanism that Congress constructed."[63]

Government officials are given broad leeway in carrying out the identification requirement of the statute. The breadth of proper activity varies significantly from jurisdiction to jurisdiction. In one circuit, all that is required is substantial compliance.[64] In another, the defendants argued that government officials had reasonable cause to believe they would be parties to the conversation. It was held that since

[57] United States v. Landmesser, 553 F.2d 17 (6th Cir. 1973).

[58] United States v. Landmesser, 553 F.2d 17 (6th Cir. 1973); United States v. Anderson, 542 F.2d 428, 431 (7th Cir. 1976); United States v. Daly, 535 F.2d 434, 438 (8th Cir. 1976); see also United States v. Smith, 519 F.2d 516, 518 (9th Cir. 1975); United States v. Armocida, 515 F.2d 29, 38 (3d Cir. 1975); United States v. Kalustian, 529 F.2d 585 (9th Cir. 1975), which requires officers applying for a court order to provide the judge with a *factual* basis for the decision. Conclusory remarks are not sufficient. Information presented by agents to the best of their knowledge and *experience* was insufficient to provide the basis for an order *Cf.* Aguilar v. Texas, 378 U.S. 108 (1964).

[59] *See* 18 U.S.C. §§2518(1((b)(iv) and (4)(a) and AR 190-53, paras. 2-1a(2)(d) and 2-2a(5)(a).

[60] *See* United States v. Kirk, 534 F.2d 1262 (8th Cir. 1976).

[61] *Id at 1275.*

[62] United States v. Kahn, 415 U.S. 143, 157 (1974); *see also* United States v. Barletta, 565 F.2d 985 (8th Cir. 1977); United States v. Santarpio, 560 F.2d 448 (1st Cir. 1977).

[63] United States v. Kahn, 415 U.S. 143, 152, 235 (1974).

[64] United States v. Martinez, 498 F.2d 464 (6th Cir. 1974).

prejudice, bad faith, or an 'attempted subterfuge' by the United States in its application was not shown, relief was not in order.[65] The same circuit reiterated the proposition later holding ". . . failure to name a known individual does not require suppression of wiretap evidence against them."[66]

The sum of it all is quite simple! Using an improper name or only part of a name will not vitiate, absent bad faith, the validity of an intercept order.[67] Moreover, the term "others as yet uknown" will suffice to describe the situation where there is more than one participant to the criminal enterprise but their identity has not yet been determined.[68] Finally, there is no requirement that law enforcement officers apply for an amended order once a new suspect comes into consideration.[69]

3. Surreptitious Entry.

Aquiring an authorization to *'bug'* frequently has triggered another problem for law enforcement officials and attorneys alike. Having a judicial blessing to plant the device is one thing, but lawfully intruding into an area where one has a reasonable expectation of privacy to plant it is clearly another. There are two distinct invasions of privacy involved in the problem:

> "Non-trespassory eavesdropping penetrates only that expectation of privacy which an individual reasonably possesses with respect to his spoken words . . . . But when agents of the Government physically enter business premises, as to which an individual has a legitimate expectation of privacy, . . . more than just his conversation is subjected to the Government scrutiny. Intruding officers are capable of seeing and touching items which would not be disclosed by the non-trespassory surveillance[70] (citations omitted).

The Supreme Court squarely faced the question in *Dalia v. United States.*[71] Initially, the Court held that there was no per se constitutional prohibition against a covert entry to install electronic surveillance devices that were otherwise legally authorized.[72] Thereafter, it found that covert entries were implicitly included within the terms of the legislation that authorized limited eavesdrop activities.[73] Lastly, the Court favored the implementation of the devices without an explicit statement to such effect in the order itself. In its reasoning, the Court refused to force judges to outline procedures executing officers would have to follow. In addition, the Court was not willing to reduce the process to one of "empty formalism."[74]

In short, that which at one time presented rather vexatious problems does so no longer. Once granted a proper order to employ investigative monitoring instruments, police personnel can implant them with impunity.

4. Minimization.

Civilian and military intercept orders are required to ". . . contain a provision that the authorization to intercept shall be executed as

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[65] United States v. Doolittle, 507 F.2d 1368 (5th Cir. 1975).

[66] United States v. De la Fuente, 548 F.2d 528 (5th Cir. 1977). *But see* AR 190-53, para. 2-2a(9)(a), which requires suppression of communications acquired in violation of the regulation.

[67] United States v. Principie, 531 F.2d 1132, 1138 (2d Cir. 1976).

[68] United States v. Kahn, 415 U.S. 143, 157(1974).

[69] United States v. Principie, 531 F.2d 1132, 1137 (2d Cir. 1976).

[70] Application of United States, 563 F.2d 637 (4th Cir. 1977).

[71] 47 U.S.L.W. 4423 (1979).

[72] Dalia v. United States, 47 U.S.L.W. 4423, 4426 (U.S. Apr. 18, 1979) No. 77-1722), 187 (1979).

[73] *Id.*

> "The language, structure, and history of the statute, however demonstrate that Congress meant to authorize courts—in certain specified circumstances—to approve electronic surveillance without limitation on the means necessary to its accomplishment, so long as they are reasonable under the circumstances."

[74] *Id.* at 193.

soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception . . . and must terminate upon attainment of the authorized objective . . ."[75] Although some restraint must be exercised in intercepting calls, the degree of restraint, *i.e.*, minimization, is left undefined. The precise question for consideration then is, how is the extent of the interception measured?

The Supreme Court in *Scott v. United States*[76] laid down the guidelines that would control government agents. The standard enunciated was one of "reasonableness."[77] The Court explained that "[b]ecause of the necessarily ad hoc nature of any determination of reasonableness, there can be no inflexible rule of law which will decide every case."[78] The sole black-letter rule that could be drawn from the opinion was that, ". . . blind reliance in the percentage of non-pertinent calls intercepted is not a sure guide to . . ."[79] determine reasonableness.

To better understand the analytical process involved in a reasonableness determination, lower court decisions must be considered. Courts have considered three factors in this evaluation:[80]

a. The nature and scope of the criminal enterprise under investigation, *e.g.*, a large scale operation requires more intercepts than a smaller one as do conversations using a colloquial code or guarded language versus undisguised language.[81]

b. The nature of the government's reasonable expectation of what the character of the conversations would be and who participants in the conversations would be. This sets the mark as to when the government can listen to communications. The expectations establish when furtive matters would most likely be discussed.[82]

c. The degree of judicial supervision involved in the operation, *e.g.*, 18 U.S.C. §2518(6) permits judges to order periodic reporting thereby enhancing the minimization effort.[83]

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[75] 18 U.S.C. §2518(5) and AR 190-53, para. 2-1a(6). Each authority also contains a specific time frame within which the intercept must terminate. Interestingly enough the codal provision is more stringent than the regulatory one. 18 U.S.C. § 2518(5) has a thirty-day requirement, whereas para. 2-1a(7) incorporates a sixty-day time frame.

[76] 436 U.S. 128 (1978). (The Court sustained the use of intercepted conversations even though only 40% of the total calls were clearly related to the offense under investigation. Using a "reasonableness" benchmark, the Court viewed the actions of the law enforcement agents proper under the overall circumstances.)

[77] The Court adopted its approach to this notion by looking to previous case law which had considered it. *See, e.g.*, Terry v. Ohio, 392 U.S. 1 (1968). Beck v. Ohio, 379 U.S. 89 (1964); Henry v. United States, 361 U.S. 98 (1959).

[78] Scott v. United States, 436 U.S. 128, 140 (1978).

[79] *Id.*

[80] See generally United States v. Hyde, 574 F.2d 856 (5th Cir. 1978); United States v. Clerkley, 556 F.2d 709 (4th Cir. 1977); United States v. Daly, 535 F.2d 434 (8th Cir. 1976); United States v. Kirk, 534 F.2d 1262 (8th Cir. 1976); United States v. London, 424 F. Supp. 556 (D.Md. 1976).

[81] The minimization process will vary as time passes during the course of the wiretap. At the outset the agents may have to listen to all or most of the calls in order to get a sense of what is going on, who is involved, how the transactions are carried out as well as other aspects of the operation. As patterns develop in time the listeners can be more selective in their choice of conversations. See United States v. Chavez, 533 F.2d 491, 493-494 (9th Cir. 1976).

[82] United States v. James, 494 F.2d 1007, 1019-21 (D.C. Cir. 1974), incorporates this factor into its analysis but further divides it into two subconsiderations. (i) Where was the location and operation of the telephone, *e.g.*, was the instrument used in a home or within a legitimate business or alternatively by one used almost exclusively for the criminal enterprise? (ii) What was the government's expectation as to the content of the call, *e.g.*, did law enforcement officers know who was involved in the activity to thereby be able to fit the program to subject individuals when calls were connected?

[83] Essentially some courts are looking to the good faith effects of investigators to adhere to the minimization requirement. One court has focused in on the idea that

In short, ". . . judicial analysis of the minimization requirement must take note of the ever-changing character of the investigation."[84]

One last idea is worthy of consideration before leaving the area. What effect, if any, does the development during the surveillance of a prima facie case have on further eavesdropping? Can law enforcement officers continue to maintain the investigation? The answer of these questions depends on guidance laid out in the court order. The judicial officer sanctioning the action must include within the order a statement of whether ". . . the interception shall automatically terminate when the described communication has been first obtained."[85] If there is not automatic termination clause, minimization would not, in and of itself, require a cessation of listening. This idea is bolstered by a clause found in 18 U.S.C. §2518(1)(d) which provides that the period of time for the eavesdropping operation is dependent on whether there is ". . . probable cause to believe that additional communications of the same type [as those in the initial part of the intercept] will occur thereafter."

To recapitulate then, the key to a successful intercept program depends on the government's needs. If investigative agents have limited their monitoring of conversations to only those matters that are salient to the investigation they will not face successful attack. On the contrary, if they have exceeded the scope of their need into purely personal matters the United States may be susceptible to judicial sanctions.[86]

5. Safeguarding Evidence.

Acquisition of material with evidentiary value does not terminate the government's legal responsibility. Codal and regulatory provisions provide guidelines regarding the protection of these items.[87] Although there are some similarities between these authorities, there are differences as well. Military counsel must be aware of these differences as either may be applicable, depending on the location of the activity.

The Codal and regulatory provisions for memorializing and protecting conversations and the approach to their eventual destruction are the same.[88] In the United States, the records may ". . . not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years."[89] Foreign operations are regulated by AR 190-53 which simply provides time frames for the maintenance of the records.[90]

There is a bifurcated means to actually protecting the evidence. Codal guidance places the responsibility upon the judge issuing the order to ensure its integrity.[91] Army authority places

". . . on the whole the agents have shown a high regard for the right of privacy and have done all they reasonably could to avoid unnecessary intrusion." United States v. Tortorello, 480 F.2d 764, 784 (2d Cir. 1973). But see Scott v. United States, 436 U.S. 128 (1978).

[84] United States v. James, 494 F.2d 1007, 1020 (D.C. Cir. 1974).

[85] 18 U.S.C. §2518(4)(e) and AR 190-53, para. 2-1a (5)(e).

[86] *See* section III, *infra*.

[87] *Compare* 18 U.S.C. §2518(8) *with* AR 190-53, para. 2-2a(8). The primary purpose for Congress establishing the sealing requirement was to protect the recordings from modification and ensure the privacy of parties to the communications. See United States v. Mendoza, 574 F.2d 1373, 1377 (5th Cir. 1978). See also United States v. Abraham, 541 F.2d 624 (6th Cir. 1976).

[88] *Id.* "The contents of any wire or oral communication intercepted . . . shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents . . . shall be done in such a way as will protect the recordidng from editing or other alterations."

[89] 18 U.S.C. §2518(8). *But see* AR 190-53, para. 6-4, seems to expand this direction from action by the judge involved to "an order of the court involved."

[90] AR 190-53, para. 6-4, states that,

> ". . . recordings of interceptions shall be retained for at least 10 years after termination of the interception prior to disposal in accordance with appropriate records retirement procedures."

[91] 18 U.S.C. §2518(8) proVides in pertinent part that, "[i]mmediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions." See United States v. Abraham, 541 F.2d 624 (6th Cir. 1976) (A judge declined to observe F.B.I. place tapes in filing cabinet which was

this function squarely in the lap of law enforcement officers.[92]

Another area which presents a difference of philosophy is the speed with which seized communications must be brought under safekeeping. Army regulation provides a twenty-four hour limit on this action.[93] Plain interpretation of the codal provision indicates that time was of the essence and the military standard would be a valid reference point. This is not the situation. Case law provides broad time frames within which the designated type of control must be carried out. Thus, fifty-seven[94] and eighty-five[95] day delays have won court approval. The key consideration in each case was the efficacy of the tapes in question. There was nothing to indicate, in either siutation, that their integrity had been compromised.[96]

In each of the previous procedural steps, the government's requirements are supported with extensive flexibility and reasonableness pervades as the lynchpin for decision.

Exclusionary Rule

Counsel must also be familiar with the circumstances under which the exclusionary rule[97] applies. This entails consideration of the two constituent components: first, an assessment of who can object to a securing impropriety in the process; second, an evaluation of those factors that properly trigger application of the rule.

The authorities differ substantially on who may object. Under codal practice:

> Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom . . . .[98]

An "aggrieved person" is further defined as "a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed."[99] Under the Military Rules of Evidence, an individual may object to the introduction of an unlawful search or seizure if such objection is timely made and the person has an adequate interest.[100] The term "adequate interest" means:

> The accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the armed forces.[101]

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sealed. It was held that the judge's action was not error since securing the tapes was performed at his direction. Moreover, any type of seal, tape or metal band used was deemed to be legally sufficient).

[92] AR 190-53, para. 2-2a(8), adopts Army Reg. 195-5, Criminal Investigations Evidence Procedures (14 July 1976), as the controlling authority for handling the evidence. Paragraph 2-4 of the latter regulation requires that, except in unusual circumstances, evidence must be turned in to an evidence custodian within twenty-four hours of the first work day following acquisition.

[93] *See* n. 91 and 92 *supra*.

[94] United States v. Lawson, 545 F.2d 557 (7th Cir. 1975).

[95] Alfano v. United States, 555 F.2d 1128 (2d Cir. 1977).

[96] *Id.* The issue in this case was raised in the setting of a past conviction remedy. The court suggested that had the question come up in a pretrial mode, all the accused would have to show would be an improper delay. *See also* United States v. Gigante, 538 F.2d 502 (2d Cir. 1976); United States v. Chun, 503 F.2d 533 (9th Cir. 1974).

[97] The rule was judicially developed in Weeks v. United States, 232 U.S. 383 (1914), and Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920). It was to serve as a prophylactic device to ensure governmental compliance with constitutional rights. This prophylactic device has been adopted for use by way of statute and regulation as well. *See, e.g.*, 18 U.S.C. §§2515 and 2518(10)(a), and AR 190-53, para. 2-2a(9).

[98] 18 U.S.C. §2518(10)(a).

[99] 18 U.S.C. §2510(11).

[100] Mil. R. Evid. 311(a) and (d).

[101] Mil. R. Evid. 311(a)(2).

This difference is significant. It would appear that an accused's contention premised on a codal point of view would have a broader base to argue from than one whose position was premised on the Rules. The authorities do not clarify whether the ostensibly more 'liberal' basis for standing of the code could be invoked by the service member being tried by court-martial

For W.I.M.E.A. conduct carried out within the United States, the government presumably would contend that procedural rules for courts-martial are correctly promulgated by the President through his power derived from Article 36, UCMJ. Hence, the rules that contemplate matters of standing within the Military Rules of Evidence must be followed. On the contrary, the accused would argue that the Military Rules of Evidence explicitly provide[102] that the authorization process in the United States is purely codal. Thus, the latter practice for contesting irregularities must be followed.

Abroad, the problem equally abounds. Although regulatory practice is the prevailing authority,[103] if codal standing is approrpiate in the United States, an accused at a court-martial may contend that there has been a violation of the equal protection principles encompassed within the Fifth Amendment's Due Process Clause.[104] Developing this position, why should there be more of a right to contest the government's disregard of rights within the United States versus overseas?

Having determined that one has the requisite interest to contest the government's intrusion and seizure, consideration of the second question becomes appropriate. It relates to those acts of misconduct that will bring the exclusionary rule into play.

It is clear that the violation of a constitutional protection will bring the exclusionary rule into consideration.[105] At an authoritative level one step below, it is equally apparent that statutory violations will lead to an evaluation of the effect of the exclusionary rule under the circumstances. Finally, at the regulatory level, questions will abound as well.

Although decisional law[106] and statutory codification[107] have explicitly stated that violation of a statute will permit suppression by an exclusionary rule, further amplification by the courts has eroded this concept. Literal statutory compliance is *not* always necessary; depending on the nature of the codification, substantial compliance may suffice to preclude application of the exclusionary rule.[108] The key question involves an evaluation of whether

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[102] Mil. R. Evid. 317(b).

[103] *See* fn. 1 *supra*.

[104] *See, e.g., Mathews v. DeCastro*, 429 U.S. 181, 182 (1976).

[105] *See* United States v. Caceres, 47 U.S.L.W. 4349 (U.S. Apr. 2, 1979) (No. 76-1309). *But see* Mil. R. Evid. 317(a) which addresses itself only to fourth amendment violations. It may be that a constitutional argument will be couched in other terms. *See, e.g.,* United States v. Caceres, at 47 U.S.L.W. 4352.

[106] United States v. Caceres, 47 U.S.L.W. 4349 (U.S. Apr. 2, 1979) (No. 76-1309).

[107] 10 U.S.C. §2518(10)(a) provides the following grounds for excluding evidence:

> (i) the communication was unlawfully intercepted;
> (ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or
> (iii) the interception was not made in conformity with the order of authorization or approval.

[108] *See* United States v. Donovan, 429 U.S. 413, 433-434 (1977); United States v. Giordano, 416 U.S. 505, 527 (1974); United States v. Chavez, 416 U.S. 562 (1974). Cf. Scott v. United States, 436 U.S. 128 (1978). See also United States v. Vento, 533 F.2d 838 (3d Cir. 1976) (inadvertent omission of the minimization provision within the court order did not ipso facto require suppression) and United States v. Chun, 503 F.2d 533, 564 (9th Cir. 1974), suggesting a tripartite approach to deciding whether suppression was in order as follows:

> (1) whether the particular procedure is a central or functional safeguard in Title III's scheme to prevent abuses;
> (2) whether the purpose which the particular procedure was designed to accomplish has been satisfied in spite of the error;
> (3) whether the statutory requirement was deliberately ignored; and, if so, whether there was any tactical advantage to be gained thereby.

there has been a ". . . failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to these situations clearly calling for the employment of this extraordinary investigative device."[109]

The final matter for examination is the degree to which violations of regulatory provisions will bring about suppression. Although the Supreme Court, in *United States v. Caceres*,[110] indicated it was unnecessary to suppress evidence secured in contravention to a regulation,[111] and this notion was incorporated into the Military Rules of Evidence,[112] judicial action has achieved a different result.[113] Strict adherence to regulatory decrees in military practice is the present standard to which law enforcement officers are being held.

The exclusionary rule represents the ultimate judicial sanction in deterring illegal governmental action during the acquisition of evidence. It precludes the use of otherwise relevant and reliable evidence to society's detriment. There is a strong recognition of this fact when W.I.M.E.A. is the means by which police are attempting to implement effective and efficient law enforcement. Although standing is defined in broad terms, courts are reticent to find this interest for to do so may limit the government's opportunity to perfect a case.

Conclusion

The road to the admissibility of evidence from electronic eavesdrop activity appears to be an extremely difficult one to travel. A little thought combined with a methodical approach will blaze a rather distinct path. The problem is not difficult. Moreover, the judiciary has smoothed the way with its statutory interpretations. After an initial encounter with the authorization process, it should become eminently clear to investigators and counsel alike that it is not a Herculean task to employ wiretap, investigative monitoring, and eavesdrop activities during an investigation. In the proper setting this powerful tool can be readily employed with extraordinary success. The key is overcoming the psychological aversion that administrative burdens have generated.

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[109] United States v. Giordano, 416 U.S. 505, 527 (1974).

[110] United States v. Caceres, 47 U.S.L.W. 4349 (U.S. Apr. 2, 1979) (No. 76-1309).

[111] Notwithstanding the fact that AR 190-53, para. 2-2a(9), provides that:

> The contents of a communication intercepted abroad, or evidence derived therefrom, is inadmissible in any court-martial proceeding, in any proceeding under Article 15 of the UCMJ, or in any other proceeding if the:
>
> (a) Communication was intercepted in violation of this regulation or applicable law.
>
> (b) Order of authorization under which it was intercepted is insufficient on its face.
>
> (c) Interception was not made in conformity with the order of authorization.

The similar language of this provision to 18 U.S.C. §2518(10)(a) would militate against applying it in a per se fashion. *See* fn. 106 *infra*.

[112] Mil. R. Evid. 317(a).

[113] *See* United States v. Dillard, 8 M.J. 213 (C.M.A. 1980). It should be noted that Judge Perry, who participated in the majority no longer sits on the Court. What Chief Judge Everett's philosophy will be at this point is only a matter of speculation.

Requiem to the Estate Carryover Basis Rule

Captain Timothy J. Grendell, JAGC, Office of the Staff Judge Advocate, 2d Armored Division, Fort Hood, Texas.

DIED: *The estate carryover basis provision of the Internal Revenue Code. Age 4. Originally touted as a progressive step toward equitable taxation of estate and lifetime property transfers, this controversial provision of the 1976 Tax Reform Act was laid to rest on 2 April 1980, when President Jimmy Carter signed the Crude Oil Windfall Profit Tax Act of 1980. Few mourned.*

"Basis" is the important factor in determining taxable gain or loss when property is disposed of.[1] A taxpayer's basis for property depends upon the manner by which the property has been acquired. The basis for property acquired by purchase is the purchase price or cost.[2] For example, Captain Smith purchased one hundred shares of stock for one thousand dollars and later sold the stock for three thousand dollars, his basis in the stock would be one thousand dollars with a taxable gain of two thousand dollars.

For property acquired by gift, the basis is the purchase price or cost at the time of the donor's original acquisition.[3] The donee is said to "carry over" the donor's basis for the property. For example, Captain Smith purchased one hundred shares of stock for one thousand dollars. He later gave the stock to his nephew. At the time of the gift, the stock was worth three thousand dollars. The nephew subsequently sells the stock for five thousand dollars. The nephew's basis in this stock is one thousand dollars and he realizes a taxable capital gain of four thousand dollars.

Prior to 1 January 1977, the recipient of a testamentary transfer received a "stepped up" basis for the property. The basis for property acquired from a decedent was its fair market value at the date of death or an alternate date six months later.[4] Applying this principle to the previous example, had Captain Smith died leaving the stock to his nephew, and the value of the stock at the date of death was three thousand dollars, the nephew's basis in the shares would have been three thousand dollars and the taxable gain realized only two thousand dollars. The tax benefit of a stepped up basis is clear.

Tax reformists considered the different treatment of lifetime sales and transfers and estate transfers to be discriminatory.[5] In particular, the stepped up basis rule substantially benefitted the upper income bracket taxpayer and his or her heirs who had the foresight and money to invest in successful investments. The tax reformists solution to this problem—a carryover basis rule for testamentary transfers—was included in the Tax Reform Act of 1976.[6] The estate carryover basis rule was an attempt to apply the carryover basis concept to property transferred after death.

To cushion the shock of the change from a stepped up basis to the carryover basis concept, the 1976 Tax Reform Act contained a "fresh start" provision which permitted a step up to the fair market value of property as of 31 December 1976. For example, Captain Smith purchased one hundred shares of stock for one thousand dollars on 17 April 1975. On 31 December 1976, the stock was worth four thousand dollars. Captain Smith died on 13 January 1979, leaving the stock to his nephew. The nephew immediate sold the stock for five thousand dollars. His basis in the shares was four thousand dollars (the value on 31 December 1976) and the taxable gain realized from the sale was one thousand dollars.

Determination of the fresh start basis for securities for which market quotations were readily available was uncomplicated. However, the fresh start adjustment to basis for other property required a special formula. Simply stated, this formula required a determination of the pre-1977 appreciation by multiplying the total amount of appreciation over the period of the decedent's ownership by a fraction, the

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[1] I.R.C. § 1001. Basis is adjusted by adding the cost of improvements and by subtracting items that are a return of capital, such as depreciation. This is called "adjusted basis." I.R.C. § 1011.

[2] I.R.C. § 1012.

[3] I.R.C. § 1015. When computing a loss, the donee's basis is either the same as the donor's or the fair market value of the property at the time of the gift, whichever is lower. *Id.* § 1015(a).

[4] Int. Rev. Code of 1954, § 1014. The executor has the option to value the property for estate tax purposes either at the date of death or at an alternate valuation date six months after death. I.R.C. § 1014.

[5] (1977) *Estate Planning Guide* (CCH) 206.

[6] Tax Reform Act of 1976, Pub. L. No. 94-455, Title XIX, § 1901(c)(8), Title XX, § 2005(a)(1), 90 Stat. 1803, 1872.

numerator being the number of days the property was held by the decedent before 1 January 1977, and the denominator being the total number of days the decedent held the property.[7] The complexity of the new carryover basis rule and its fresh start corollary added cost and confusion to the administration of estates. The new carryover basis rule rapidly became very popular with accountants and estate tax specialists.

Repeal of the carryover basis rule was included as a rider to The Crude Oil Windfall Profit Tax Act of 1980.[8] This action reinstates the traditional stepped up basis rule for testamentary transfers. Once again, the basis of property transferred by the decedent will be stepped up to its fair market value on the date of death.[9] Return to the stepped up basis rule will result in more simplified and less expensive estate administration and considerable tax savings for recipients of appreciated estate assets. The only people who will not profit from the step back to stepped up basis will be those accountants and estate tax specialists who battled the complexities of the carryover basis rule. Meanwhile, tax reformists once again must search the horizon for an answer to the problem of equitable taxation of lifetime and testamentary property transfers.

[7] For example, decedent purchased land on 1 January 1973, for $100.00. Assuming decedent died on 31 December 1982, and the fair market value of the property at death was $150.00. Without determining the adjusted basis, the estate carryover basis under the 1976 Reform Act would be the property's value on 31 December 1976. The computation of this value is as follows:

$$\$100{,}00 + \$50.00 \times 10 \times \frac{4 \times 365 + 1\ (1976\ \text{leap year})}{365 + 2(1976, 1980\ \text{leap year})} = \$120.00$$

[8] The Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, Title IV, § 401(a), 94 Stat. 299. This change in the basis rule applies to property acquired from a decedent dying after 31 December 1979.

[9] *See* note 4 *supra*.

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan

During July I visited Headquarters, Sixth US Army, at the Presidio of San Francisco, primarily to observe and address the enlisted members of the Army Reserve during their annual training.

Training was conducted at Camp Park, located in the San Francisco area. Separate classes are conducted for E1-E9 Legal Clerks, MOS 71D, and for E1-E9 Court-Reporters, MOS 71E. Approximately 40 students attended the courses. Student participation in both classes was outstanding.

During my question and answer period, most of the comments were directed toward establishing a better working relationship with the active Army. For example, there seemed to be a consensus that individuals reporting to active units for annual training are often not given meaningful MOS-related duties—and, in some cases, no job at all. I encourage all chief clerks to take an active role in working with reserve members, especially in this area of job assignment.

MSG Miguel A. Yznaga, Jr., the chief clerk at Sixth Army SJA office, has an excellent training program for reserve personnel. I highly recommend that other chief clerks who work with reserve personnel take a look at the Sixth Army training program or discuss the program with MSG Yznaga.

SQT: I have not received all the scores from the MACOMs on the SQT test results. However, the early returns I have received are encouraging. Eighth Army in Korea, Fort Bliss,

Fort Dix, and Fort Benning have reported that the majority of their personnel attained a score of 70% or better, with scores above 90% not uncommon.

A number of personnel are still in the process of taking the test. All testing should be completed in the near future. After all scores are in, I will provide an average for the MOS and an analysis that might be of interest.

For individuals still preparing for the test, I encourage you to try for 100% on the written portion and all "go" on the hands-on portion.

Promotion Boards: (a) The next E7 selection board is scheduled to convene on 6 January 1981.

(b) The E8 board is scheduled to convene on 28 October 1980.

(c) The E9 and SGM Academy selection board convened 3-19 September 1980.

Military Education: The US Army Training Support Center Bulletin No. 80-3, dated July 1980 and DA Pam 351-20-17 provide an updated listing of The Judge Advocate General's School correspondence courses that are available for enlisted personnel.

Completion of correspondence courses increase individual proficiency, unit proficiency, promotion points, and success on SQT testing.

The next classes of the ANCOC & SGM Academy begin in January 1981.

American Bar Association Young Lawyers Division Annual Meeting

Captain Jan W. Serene, ABA/YLD Delegate,
Administrative Law Division, OTJAG

Under the by-laws of the Young Lawyers Division (YLD) of the American Bar Association (ABA), the Judge Advocate General has authority to appoint an Army young lawyer (36 years old or younger) as an assembly delegate to each annual cnvention of the YLD. During the August meeting of the ABA in Honolulu, Captain Jan W. Serene attended a number of activities as the Army YLD delegate appointed by TJAG.

The Young Lawyers Division has become the largest single organization within the ABA. All members of the ABA who are 36 years old or younger are automatically members of the YLD at no additional cost. For the first time in the ABA's history, young lawyers as of this year comprise more than 50% of the total membership of the ABA. The YLD because of its large constituency plays a significant role in the development of ABA policy and programs.

During the course of this year's convention, the YLD assembly debated and passed several resolutions of interest to young lawyers in the military. Resolution 3-YL encourages the states to implement a uniform standard of admission to the bar by reciprocity. The resolution proposes that any attorney who has been admitted to practice in one or more states or the District of Columbia, and who has practiced law in good standing for not less than three years, should be admitted to the practice of law in any additional state without examination. The resolution specifically recognizes practice by judge advocates and law specialists in the Armed Forces as satisfying the practice requirement.

Resolutions 5-YL through 13-B-YL concerned recommended changes to the proposed Model Rules of Professional Conduct. The Model Rules are currently being circulated in draft form for comments from the legal community. A final draft is scheduled for release in February 1981, and the ABA House of Delegates should consider the proposal for possible adoption at the 1981 Annual Meeting of the ABA next summer. The YLD resolutions recommended that the following changes be made to the proposed rules:

1. A division of fees may be made by lawyers not in the same firm only in proportion to the services performed by each. (The proposed rules would also allow a division in proportion to the responsibility assumed by each attorney.)

2. An attorney should withdraw from representation of a client rather than disclose the client's confidences. (The proposed rules would require the attorney to disclose to the court when a client is seriously misleading the court or committing perjury.)

3. A lawyer should not give advice to an unrepresented opposing party, other than the advice to secure counsel. (The proposed rules would adopt a less rigid rule that a lawyer should refrain from unfairly exploiting an unrepresented opposing party's ignorance of the law or practices of the tribunal.)

4. The rigid requirement of annual pro bono service and reporting thereof to appropriate regulatory authorities should be deleted. (The draft rules would require the annual rendering of unpaid public interest legal services, whereas the current Code of Professional Responsibility encourages pro bono work. There is some question whether lawyers in the military and the government could be required to perform pro bono work because they are restricted from engaging in other legal work.)

5. Advertising of services at a stated flat fee should be prohibited when most clients requesting those services during the preceding year were charged a higher price.

6. Solicitations which involve conflicts of interests or other violations of ethical rules should be prohibited.

For further details concerning the proposed Model Rules of Professional Conduct or questions concerning ABA/YLD activities, inquiries should be addressed to: DAJA-ALG (ATTN: CPT Serene), Pentagon, Washington, D.C. 20310 (Autovon: 224-4316).

Legal Assistance Items

Major Joel R. Alvarey, Major Joseph C. Fowler, and Major Walter B. Huffman Administrative and Civil Law Division, TJAGSA

Bankruptcy-Fresh Start Rights

Action of a public utility in attempting to collect debts which had been discharged in bankruptcy did not violate the "fresh start" right of the Bankruptcy Act. *Ryan v. Ohio Edison Co.*, 611 F.2d 1170 (6th Cir., 1979).

Section 14(f)(2) of the Bankruptcy Act provides that an order of discharge shall "enjoin all creditors whose debts are discharged from thereafter instituting or employing any process to collect such debts as personal liabilities of the bankrupt". Plaintiff contends that the word "process" includes any measure employed by a creditor to collect a debt. The court, relying on prior case law, statutory language, and legislative history, concluded that the word "process" as used in the Bankruptcy Act means only judicial process. Therefore, the informal practice of sending letters threatening to terminate electricity services unless debts were paid does not violate plaintiffs' "fresh start" rights. *See Girardier v. Webster College*, 563 F.2d 1267 (8th Cir. 1977); *Handsom v. Rutgers University*, 445 F. Supp. 1362 (D.N.J. 1978).

Furthermore, the Court held that there is no implied private right of action in the Bankruptcy Act. Although a private plaintiff was successful in striking down a state statute which prohibited the "issuance of licenses to drivers who had not paid tort judgements that had been discharged in bankruptcy", that case was decided under the Supremacy clause. *Perez v. Campbell*, 402 U.S. 637 (1971). In the instant case, there was no state action in-

volved. The acts of public utilities have generally been found to be excluded from the definition of state action. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974), *Flagg Bros. Inc. v. Brooks*, 436 U.S. 149 (1978). Defendants' actions are not unlawful under the Supremacy Clause.

Finally, Defendants' actions do not give rise to a private course of action under the Bankruptcy Act. the Supreme Cort in *Court* v. Ash, 422 U.S. 66 (1975), enumerated four factors a court must consider before implying a private cause of action where Congress has not expressly provided for one. The four factors were not fulfilled in this instance.

TRUSTS-Retained Power of Settlor to Change Corporate Trustees May Cause Inclusion of Trust Assets in Settlor's Estate

In a major departure from prior law, the IRS has concluded that a provision in a trust instrument allowing a settlor to remove a corporate trustee without cause and substitute another corporate trustee may result in the inclusion of the trust corpus in the settlor's estate. Rev. Rul. 79-353, IRB 1979-44, 27.

The trust considered in this ruling was an irrevocable *inter vivos* trust over which an independent corporate trustee exercised complete discretion as to distribution of principal and income among the settlor's adult children. The trust instrument provided that on the death of the children, the remaining trust corpus would be paid to the settlor's grandchildren. Under the trust's provisions, the settlor retained the power to remove the trustee without cause and substitute another corporate trustee, but he could not appoint himself successor trustee.

The settlor died without exercising the retained power, and the IRS required inclusion of the trust corpus ($315,000) in the settlor's gross estate. The Code sections cited by the Service in support of this ruling were 2036(a)(2) (retained right to designate possession or enjoyment of property/income), and 2038(a)(1) (retained power to alter, amend, revoke, or terminate beneficial enjoyment of trust property).

Under prior law, the cited sections would require a trust corpus to be included in a settlor's gross estate if the settlor retained the power to appoint himself or another nonadverse party, *e.g.*, a corporation in which the settlor held a majority of voting stock, as successor trustee. The Service's conclusion in *Rev. Rul.* 79-353 that a retained power to remove a corporate trustee at will and substitute *any* other corporate trustee, where the trustee has unlimited dispersal authority, will also pull the trust assets back into the settlor's estate, represents a quantum leap from prior law. Also, because the trust provision involved in this ruling is in wide use and, in fact, was considered an excellent estate planning technique, *Rev. Rul.* 79-353 effects the taxability of many trusts.

Rev. Rul. 79-353 is under attack by a majority of the estate planning community as being incorrectly decided. However, the IRS has steadfastly refused to modify the decision. Legal Assistance Officers should take immediate action to review existing *inter vivos* trusts and annotate estate planning materials in accordance with this ruling.

Custody—Third-Party Intervention

Third party intervention is becoming a frequent occurrence in child custody proceedings, particularly where grandparents or other relatives have had temporary custody for a period of time. Where the biological parents are unfit, courts have little trouble awarding custody to third parties. Courts have wrestled, however, with the issue of whether a third party may be given custody in preference to a fit, custody-seeking biological parent. In *Whitlatch v. Whitlatch*, 6 Fam. L. Rep. 2684 (Neb., 1980), the Nebraska Supreme Court upheld a custody award to the maternal grandmother over the ojbections of the fit, biological father. The child had lived with the maternal grandmother since birth and thought of her as his real mother. The father had shown little interest in the child prior to the custody dispute. In affirming the

award to the maternal grandmother, the Nebraska Supreme Court held that the best interests of the child is the test in that state where the child has formed a natural attachment to persons who have had custody for a long period of time.

Custody—Removal from the Jurisdiction

Because servicemembers often change their residences in response to military orders, they may face problems in a custody situation where the court requires that the child or children involved remain in that jurisdiction, usually to remain in contact with the non-custodial parent. The servicemember must then decide whether to leave the service or give up custody unless the court allows the move. The Illinois Appellate Court for the First District recently decided that the standard for permitting such a move is a showing that the move will improve the quality of life for both the custodial parent and the child. In deciding *Arquilla v. Arquilla*, 6 Fam. L. Rep. 2683 (Ill. App. 1st, 1980), the court held that the custodial mother and her child could move from Chicago to New Orleans where the mother had a firm job offer, the cost of living is less, and the child will live in a good environment.

In a similar situation, a New York Appellate Court held that the best interests of the child are paramount in custody cases and that, where a move to another jurisdiction was in the child's interests, such a move was permissible despite the loss of contact with the non-custodial parent. In *Todaro v. Todaro*, 6 Fam. L. Rep. 2696 (N.Y. App. Div. 1st, 1980), the custodial mother was moving to Chicago to marry and establish a stable home life for the child. Despite the father's objection, the court found that this move was in the child's best interests.

New Legislation

Alabama has enacted HB 151 providing that, effective 19 May 1980, a State Parent Locator Office will be established in the Department of Pensions and Security to be used to locate absent parents who fail to support their children.

Iowa has enacted SB 2114, effective 2 July 1980, allowing, under certain circumstances, adult adoptees to inspect their birth and adoption records for medical and family history information. The law does not allow disclosure of the adoptee's natural parents' identity.

Also, effective 1 July 1980, Iowa will admit in paternity proceedings the results of blood tests which show a statistical probability of paternity to be weighed along with other evidence.

North Carolina has created a central agency, effective 15 September 1980, where biological fathers may record their interests in their children.

Rhode Island has enacted legislation permitting courts to grant visitation rights to grandparents.

Effective 1 July 1980, Virginia allows the termination of support and maintenance if the recipient spouse unlawfully cohabits with another.

New York has revised its law regarding property distribution and spousal maintenance on divorce. The new law is sex neutral, so either spouse can be ordered to pay support. Other significant changes are the establishment of guidelines for courts to consider in making an equitable distribution of property and a provision allowing rehabilitative rather than permanent alimony at the discretion of the court.

New Legislation

Nebraska, in an amendment to section 42-366(8) of the Revised Statutes, 1943, has directed its courts to make an equitable division of the marital estate if the parties to a marriage dissolution cannot agree to a fair settlement. For purposes of this division, the statute includes, as property, any pension plans, retirement plans, annuities and other deferred compensation benefits owned by either party, whether vested or not vested.

Judiciary Notes

US Army Legal Services Agency

Digests—Article 69, UCMJ, Applications

In *Kleinschrodt,* SUMCM 1980/4764, PV2 G and SP4 D, alleged co-conspirators and accomplices, were called as witnesses by the summary court officer but elected not to testify. Investigator A identified photocopies of the front page of statements given by the accused, PV2 G, and SP4 D as statements given by the respective individuals. The copies lacked signatures, and there was no evidence as to how the statements were obtained. No other evidence was received on the merits.

To be admissible at trial, the accused's confession must be affirmatively shown to be voluntary unless the defense expressly consents to omission of such a showing. Paragraph 140*a,* MCM 1969 (Rev.); Miranda v. Arizona, 384 US 436 (1966); US v. Tempia, 16 USCMA 629, 37 CMR 249 (1967). Failure to object at trial does not waive admissibility of a confession nor the requirement for a proper foundation to establish its voluntariness. US v. Kaiser, 19 USCMA 104, 41 CMR 104 (1969). In this case, only the source of the confession was established, not how it was taken. The confession was not shown to be an exception to the hearsay rule or as complying with the provisions of Article 31, UCMJ. Due to the extreme prejudicial effect of consideration by a fact-finder of a confession which has not been established as voluntary, reversal of the conviction of all charges to which the confession applies is mandated, regardless of any other evidence of guilt. US v. Hall, 1 MJ 162 (CMA 1975); US v. Kaiser, *supra.* Relief was granted.

In *Cooper,* SUMCM 1980/4769, the accused was being reassigned from Korea to Fort Lewis, Washington, Pursuant to his PCS orders, the accused received port-call instructions to be at Kimpo Airport, Korea, at 1515 hours on 17 May 80, in order to take a commercial flight from Korea to his new duty station. The accused failed to appear for his scheduled port call, and was charged with missing movement in violation of Article 87, UCMJ.

Relying on US v. Smith, 2 MJ 566 (ACMR 1976), it was determined that the accused's conduct did not constitute the offense of missing movement. In *Smith,* the court stated that the explicit reason for Article 87 was the problem encountered during World War II as a result of members of units or crews who failed to show up when their ships or units moved as such. Since the accused was proceeding on individual permanent change of station orders which did not involve other members of his unit, his flight was not a movement within the meaning of Article 87, UCMJ.

It was concluded that the evidence established the lesser offense of failure to repair in violation of Article 86. The findings were modified to approve only a finding of guilty of the lesser offense; however, a reduction of the sentence was not warranted.

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Making a Complete Record:

Defense appellate counsel frequently point out omissions in records of trial which Government counsel are then forced to defend on incomplete records. Obviously, it is not possible to anticipate at trial every conceivable challenge that may, with hindsight, be lodged. But to the extent possible, the effort must be made. Several recent cases are illustrative of post-trial challenges that might have been avoided:

In one case, appellant was tried for breaking into and larceny from a commissary. The crime

was discovered when he entered his barracks and a package he was carrying was searched pursuant to a battery security SOP. The SOP was not attached to the record and only contradictory testimony described its contents. During oral argument, the Court of Military Appeals was *very* concerned about the failure of the record to contain the SOP; most of the questions from the Court concerning its content could not be answered.

In another case, appellant contended at trial that, prior to his enlistment, he had been incarcerated pending trial as a juvenile. He claimed that the civilian judge gave him time to enlist and that the recruiter began the paperwork knowing that charges were pending. Thereupon, according to appellant, the charges were dismissed and appellant completed the enlistment process. However, trial counsel had information from the juvenile court that charges had been dismissed against appellant *prior* to appellant's initial encounter with the recruiter. When offered an opportunity by the military judge to verify the information, trial counsel withdrew his comment, leaving only the defense version of the facts on the record. This unilateral action greatly narrowed the range of the Government's response on appeal.

In another case, appellant was convicted of possessing a handgun in violation of a regulation. Conflicting eye-witness testimony was relied on at trial and the weapon was never introduced. On appeal, appellant challenged the sufficiency of the evidence, claiming that the Government failed to prove that the weapon was not merely a replica. Unbeknownst to trial counsel, the military police had possession of the weapon all the while. Had trial counsel been better prepared, this appellate issue would have been avoided.

In addition, trial counsel should insure that all relevant portions of regulations are attached to the record. This is essential when dealing with regulations below Army level which frequently are not available to appellate counsel or which, if available, may be out of date. Relevant portions should include punitive language and exceptions, as well as the substantive areas. Attaching the regulation helps not only the trial judge but also appellate counsel and judges.

2. Sentence and Punishment:

Remind your judge to review the sentence and findings worksheets *before* annuoncement by the president of the court. In a recent case, the sentence announced was, "Four months at hard labor," instead of, "Confinement at hard labor for four months," as intended. The result was hard labor without confinement.

3. Witnesses as Spectators:

Occasionally defense witnesses, particularly relatives, are permitted by Government counsel to remain in the courtroom after they have completed their testimony without due regard being given to their potential use as rebuttal witnesses. In a recent case, where appellant challenged *in personam* jurisdiction based on recruiter connivance, appellant's mother testified for the defense on one instance of the alleged misconduct but not on another alleged instance which she also supposedly witnessed. After her testimony, she was allowed to observe her son's testimony. This effectively precluded the Government's calling her to testify in rebuttal as to the second alleged instance. Certainly, the Government should be liberal, whenever possible, in permitting relatives to observe trials. However, where it is anticipated that a relative may be a witness on a motion or during trial on the merits, it may be necessary to exclude relatives until that portion of the trial is completed.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

1. Former JAGC Officer Named Division Commander

John J. Dillon, an Indianapolis attorney and long-time military lawyer, has been named commander of the National Guard's 38th Infantry Division and promoted to major general.

Gen. Dillon was a member of the Judge Advocate General Corps from 1954 to 1975. At

that time, at the rank of colonel, he was named to head the Indiana Army National Guard Separate Command.

Later, he was assigned to the State Area Command and promoted to brigadier general. In that capacity, he directed Guard efforts in coping with natural disasters and civil disturbances, as well as mobilization planning.

In addition to his Guard service and civilian law practice, Dillon is a former Attorney General of Indiana. During his tenure as Attorney General, he drafted an opinion on National Guard rights and responsibilities which became a model for legislation in Indiana and other states.

The new commander is a graduate of Xavier University and the Indiana Univ. School of Law. He has been both a student and instructor at the Judge Advocate General School.

The 38th Division, which Gen. Dillon now commands, includes nearly 15,000 troops in both Indiana and Michigan.

2. Mobilization Designee Vacancies

A number of installations have recently had new mobilization designee positions approved and applications may be made for these and other vacancies which now exist. Interested JA Reservists should submit Application for Mobilization Designation Assignment (DA Form 2976) to The Judge Advocate General's School, ATTN: Colonel William L. Carew, Reserve Affairs Department, Charlottesville, Virginia 22901.

Current positions available are as follows:

GRD	*PARA*	*LINE*	*SEQ*	*POSITION*	*AGENCY*	*CITY*
MAJ	01A	01A	01	Dep Ch Atty (Proc Background)	Def Supply Svc	Washington, DC
MAJ	01N	01A	02	Judge Advocate	Fitzsimmons AMC	Aurora, CO
LTC	04	05	01	App Mil Judge	USALSA	Falls Church, VA
LTC	06	04	09	Mil Judge	USALSA	Falls Church, VA
CPT	07	06	02	Judge Advocate	USALSA	Falls Church, VA
MAJ	08	05	03	Judge Advocate	USALSA	Falls Church, VA
CPT	08	07	01	Judge Advocate	USALSA	Falls Church, VA
CPT	09	08	02	Judge Advocate	USALSA	Falls Church, VA
LTC	09C	03	01	Intl Affairs	OTJAG	Washington, DC
MAJ	10D	03	01	Admin Law	OTJAG	Washington, DC
LTC	11A	04	01	JA Opinions Br	OTJAG	Washington, DC
LTC	05A	02	01	Dep Chief	USA Clms Svc	Ft Meade, MD
MAJ	78B	02	01	Cmd JA	USA Depot	Corpus Christi, TX
MAJ	07	02	01	Judge Advocate	USAR Sch Tech Lab	Moffet Field, CA
MAJ	10A	02	01	Asst SJA	Sixth US Army	Presidio SF, CA
CPT	03B	01B	01	Trial Counsel	USA Garrison	Ft Devens, MA
CPT	03B	01B	03	Trial Counsel	USA Garrison	Ft Devens, MA
CPT	03C	01A	03	Defense Counsel	USA Garrison	Ft Devens, MA
MAJ	05A	03	01	Contract Law Off	USA Garrison	Ft Bragg, NC
MAJ	05A	04	01	JA	USA Garrison	Ft Bragg, NC
LTC	05B	01	01	Ch, Mil Justice	USA Garrison	Ft Bragg, NC
MAJ	05B	03	01	Trial Counsel	USA Garrison	Ft Bragg, NC
CPT	05B	04	01	Asst JA	USA Garrison	Ft Bragg, NC
CPT	05B	05	01	Asst JA	USA Garrison	Ft Bragg, NC
CPT	05B	07	01	Defense Counsel	USA Garrison	Ft Bragg, NC
CPT	05B	08	01	Trial Counsel	USA Garrison	Ft Bragg, NC
MAJ	05C	02	01	JA	USA Garrison	Ft Bragg, NC
MAJ	05D	01	01	Claims Off	USA Garrison	Ft Bragg, NC
CPT	03A	02	04	Trial Counsel	101st Abn Div	Ft Campbell, KY

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
MAJ	03B	01	01	Ch, Def Counsel	101st Abn Div	Ft Campbell, KY
CPT	03B	02	04	Def Counsel	101st Abn Div	Ft Campbell, KY
CPT	03D	06	02	Asst SJA-DC	USA Garrison	Ft Stewart, GA
MAJ	03E	01	01	Asst SJA	USA Garrison	Ft Stewart, GA
CPT	52C	02	02	Asst SJA	USA Garrison	Ft Stewart, GA
LTC	03	02	01	Dep SJ	USA Garrison	Ft Hood, TX
MAJ	03B	02	01	Trial Counsel	USA Garrison	Ft Hood, TX
LTC	03C	01	01	Def Counsel	USA Garrison	Ft Hood, TX
MAJ	03D	02	02	Asst JA	USA Garrison	Ft Hood, TX
MAJ	03E	01	01	Ch, Legal Asst Off	USA Garrison	Ft Hood, TX
CPT	03E	03	01	Legal Asst Off	USA Garrison	Ft Hood, TX
CPT	03E	03	02	Legal Asst Off	USA Garrison	Ft Hood, TX
CPT	03F	03	01	Asst Clms Off	USA Garrison	Ft Hood, TX
CPT	03B	03	01	Def Counsel	5th Inf Div	Ft Polk, LA
CPT	03B	03	02	Def Counsel	5th Inf Div	Ft Polk, LA
CPT	03B	03	03	Def Counsel	5th Inf Div	Ft Polk, LA
CPT	03B	03	04	Def Counsel	5th Inf Div	Ft Polk, LA
CPT	03B	04	02	Trial Counsel	5th Inf Div	Ft Polk, LA
MAJ	03C	01	01	Asst SJA	5th Inf Div	Ft Polk, LA
MAJ	03C	01	02	Asst SJA	5th Inf Div	Ft Polk, LA
MAJ	03C	01	02	Ch, Mil Justice	USA Garrison	Ft Sheridan, IL
MAJ	02A	02	01	Ch, Def Counsel	USA Garrison	Ft Riley, KS
MAJ	02B	03	01	Ch, Legal Asst	USA Garrison	Ft Riley, KS
CPT	02B	04	01	Asst JA	USA Garrison	Ft Riley, KS
CPT	02C	02	01	Asst JA	USA Garrison	Ft Riley, KS
CPT	03B	03	02	JA	Ft McCoy	Sparta, WI
CPT	03B	03	03	JA	Ft McCoy	Sparta, WI
CPT	03B	03	04	JA	Ft McCoy	Sparta, WI
CPT	03C	02	02	Mil Aff Leg Asst O	Ft McCoy	Sparta, WI
MAJ	66	02	01	JA	Ft McCoy	Sparta, WI
MAJ	03D	01	01	Ch, Admin Law Br	9th Inf Div	Ft Lewis, WA
CPT	21J	01	01	JA	9th Inf Div	Ft Lewis, WA
CPT	03B	02	01	JA	USA Garrison	Ft Buchanan, PR
MAJ	03D	01	01	Ch, JA	USA Garrison	Ft Buchanan, PR
CPT	03D	02	01	Judge Advocate	USA Garrison	Ft Buchanan, PR
CPT	03E	02	01	JA	USA Garrison	Ft Buchanan, PR
MAJ	05F	02	01	Mil Affrs Off	USA Armor Cen	Ft Knox, KY
CPT	07A	04	01	JA	Avn Center	Ft Rucker, AL
CPT	38A	03	02	Asst SJA	USA Garrison	Ft Chaffee, AR
CPT	38A	03	05	Asst SJA	USA Garrison	Ft Chaffee, AR
CPT	38A	03	06	Asst SJA	USA Garrison	Ft Chaffee, AR
CPT	38A	03	07	Asst SJA	USA Garrison	Ft Chaffee, AR
MAJ	38B	02	01	Admin Law Off	USA Garrison	Ft Chaffee, AR
MAJ	38B	02	02	Admin Law Off	USA Garrison	Ft Chaffee, AR
CPT	38B	04	01	Asst SJA	USA Garrison	Ft Chaffee, AR
CPT	38B	04	02	Asst SJA	USA Garrison	Ft Chaffee, AR
CPT	38B	04	03	Asst SJA	USA Garrison	Ft Chaffee, AR
MAJ	12	02	02	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN

3. Reserve Component Technical (On-Site) Training Schedule, Academic Year 1980-81

1. The schedule printed below sets forth the training sites, dates, subjects, instructors and local action officers for the Technical (On-Site) Training program for academic year 1980-81. All judge advocate officers (active, reserve, National Guard, and other services) are encouraged to attend this training period. Reserve Component judge advocates assigned to JAGSO detachments or to judge advocate sections of USAR and ARNG troop program units are required to attend the training for their geographical area (Paragraph 1-3, Appendix I, FORSCOM Reg. 350-2 and AR 135-316). Individual Ready Reserve (IRR) judge advocates (those assigned to the Control Group (Reinforcement, Mobilization Designation, Annual Training, or Standby) are encouraged to attend this training; these officers will receive two retirement points for each day of attendance. All active duty judge advocate officers assigned to installations located near the scheduled training site are encouraged to attend the training sessions. Department of the Army civilian attorneys and Reserve Component personnel who are attorneys but not judge advocates are invited. This technical training has been approved by various states for CLE credit and occasionally is co-sponsored with some other organization, for example, the Federal Bar Association. The local action officer will have information in this regard.

2. Action officers are required to coordinate with all Reserve Component units having judge advocate officers assigned and with active armed forces installations with legal personnel, and are required to notify all members of the IRR that the training will occur in their geographical area. These actions provide maximum opportunity for interested JAGC officers to take advantage of this training.

3. JAGSO detachment commanders should insure that unit training schedules reflect the scheduled technical training. SJA's of other Reserve Component troop program units should insure that the unit schedule reflects that the judge advocate section will attend technical training in accordance with the below printed schedule RST (regularly scheduled training), as ET (equivalent training) or on manday spaces. It is recognized that many units providing mutual support to active armed forces installations may have to notify the SJA of that installation that mutual support will not be provided on the day(s) of instruction.

4. Questions concerning the on-site instructional program should be directed to the appropriate action officer at the local level. Problems which cannot be resolved by the action officer or the unit commander should be directed to Captain (P) James E. McMenis, Chief, Unit Liaison and Training Office, Reserve Affairs Department, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia 22901 (telephones 804-293-6121, or Autovon 274-7110, Extension 293-6121).

	City, Host Unit & Training Site	*Date*	*Subjects*	*Instructors*	*Action Officers Address and Phone No.*
1	Little Rock 32nd JAG Det Seymour Terry Armory (UALR Campus) 3600 Pierce Street Little Rock, AR 72204	4 Oct 80	Crim Law Adm&Civ Law (Tape) Int'l Law (Tape	CPT (P) Richard Gasperini	MAJ Donald Rebsamen Workman's Compensation Commission, Justice Bldg Little Rock, AR 72201 Office: (501) 372-3930 Home: (501) 664-5949
	St. Louis 118th/119th JAG Det Bar Association of Metropolitan St. Louis Clayton Facility 777 Bonhomme Clayton, MO	5 Oct 80	Crim Law Adm&Civ Law (Tape) Int'l Law (Tape)	CPT (P) Richard Gasperini	LTC Claude McElwee 11 York Hills Brentwood, MO 63114 Office: (314) 721-1900 Home: (314) 997-7596
2	Minneapolis, MN 88th ARCOM/214th Mil Law Cen Regional Conference (held in conjunction with the FBA, and the ROA, includes 103rd COSCOM) North Star Inn Minneapolis, MN	18 Oct 80	Crim Law Adm&Civ Law	LTC Herbert J. Green MAJ Joel R. Alvarey	MAJ Frederick Lambrecht 2182 AZTEC Lane St Paul, MN 55120 Office: (612) 725-4677 Home: (612) 454-5418
	Omaha, NE 111th/112th/119th JAG Dets USAR Center 21st and Woolworth Omaha, NE	19 Oct 80	Crim Law Int'l Law (Tape) Adm&Civ Law	LTC Herbert J. Green MAJ Joel R. Alvarey	LTC David Kolenda 600 Keeline Bldg Omaha, NE 68102 Office: (402) 341-0612 Home: (402) 339-2813
3	Hartford, CT 76th Division (TNG) USAR Center 700 S. Quaker Lane West Hartford, CT 06110	25 Oct 80	Crim Law Adm&Civ Law (Tape)	CPT (P) Larry R. Dean	LTC Jason Pearl 19 South High Street New Britain, CT 06050 Office: (203) 229-1603 Home: (203) 224-0740
	Boston (94th ARCOM/3d Mil Law Cen Regional Conference) Bldg 1606 Hanscom Field AFB, MA	25/26 Oct 80	Crim Law Adm&Civ Law (Tape Int'l Law Contr Law (Tape)	CPT (P) Larry R. Dean MAJ Eugene Fryer	CW4 Paul Kennedy % SJA Ft Devens Ft Devens, MA Office: (617) 796-2063 AND COL Neil J. Roche 55 W. Central Street Franklin, MA 02038 Office: (617) 528-2402 Home: (617) 528-2783

	City, Host Unit & Training Site	*Date*	*Subjects*	*Instructors*	*Action Officers Address and Phone No.*
4	Columbia, SC 120th USARCOM/12th Military Law Center 2d Annual Regional JAG Conference Main Auditorium, School of Law University of South Carolina Columbia, SC	1–2 Nov 80	Adm&Civ Law (Tape) Crim Law Int'l Law Contr Law (Tape)	MAJ Owen D. Basham CPT (P) H. Wayne Elliott	LTC Mark Whitaker P.O. Box 764 Columbia, SC 29218 Office: (803) 748-3399 Home: (803) 787-0926 Military: (803) 751-3151/7579
5	New York 77th USARCOM/4th Military Law Center, 2d Mid-Atlantic Regional JAG Conference Oval Room, 43rd Floor One World Trade Center New York, NY 10048	8–9 Nov 80	Adm& Civ Law (Tape) Crim Law (Tape) Int'l Law Contr Law	MAJ David R. Dowell CPT (P) James H. Rosenblatt	COL Milton H. Pachter %New York Port Authority 1 World Trade Center, 66th Floor New York, NY 10048 Office: (212) 466-8762 Home: (212) 982-2824 AND LTC (P) Michael Bradie 26 Riveria Court Malverne, NW 11565 Office: (516) 295-3344 Home: (516) 593-2018
6	Chicago 86th ARCOM/7th Mil Law Cen (Regional Conference) Officers Club Great Lakes Naval Training Center, IL	15–16 Nov 80	Crim Law Adm&Civ Law (Tape) Int'l Law (Tape) Contr Law	MAJ Lee D. Schinasi MAJ N. "Chip" Retson	CPT John C. Jahrling 513 South Lincoln Park Ridge, IL 60068 Office: (312) 829-4334 Home: (312) 825-4560 AND MAJ William G. Raysa Suite 332, 1011 Lake Street Oak Ridge, IL 60301 Office: (312) 386-7273 Home: (312) 562-8699
7	Detroit 70th Div(Tng)/106th JAG Det POXON USAR Center 26402 West 11 Mile Road Southfield, MI 48034	22 Nov 80	Crim Law Adm&Civ Law (Tape) Contr Law	CPT Joseph E. Ross MAJ N. "Chip" Retson	COL Mark A. Loush 1151 Hollywood Grosse Pointe Woods, MI 48236 Office: (313) 226-6070 Home: (313) 886-3087

	City, Host Unit & Training Site	*Date*	*Subjects*	*Instructors*	*Action Officers Address and Phone No.*
	Indianapolis 123d ARCOM/136th JAG Det USAR Center, Ft Harrison Indianapolis, IN	23 Nov 80	Crim Law Adm&Civ Law (Tape) Contr Law	CPT Joseph E. Ross MAJ N. "Chip" Retson	MAJ Thomas Williams 112 East Main Greenfield, IN 46140 Office: (317) 462-7758 Home: (317) 462-4052
8	Austin, TX 17th/211th JAG Det USAR Center 4601 Fairview Drive Austin, TX 78731	10 Jan 81	Crim Law (Tape) Int'l Law	CPT Michelle Brown	LTC Gerald Brown 4100 Briarcliff Temple, TX 76501 Office: (817) 778-6761 Home: (817) 773-7120
	Dallas-Ft Worth 18th/20th JAG Det USAR Center 10031 E. Northwest Highway Dallas, TX 75238	10 Jan 81	Contr Law Crim Law (Tape)	MAJ Riggs L. Wilks	LTC Virgil A. Lowrie 1101 Skylark Denton, TX 76201 Office: (817) 387-3831, ext 3531 Home: (817) 382-9409
	Houston, TX 14th/15th/144th JAG Det University of Houston, School of Law Houston, TX	11 Jan 81	Crim Law (Tape) Adm&Civ Law (tape) Int'l Law	CPT Michelle Brown	MAJ Michael Thibodeaux 1712 North Red Cider Circle Woodlands, TX 77380 Office: (713) 529-0033 Home: (713) 367-8233
	Tulsa, OK 29th/35th JAG Det John N. Reese Jr. USAR Center 4000 East 15th Street Tulsa, OK	11 Jan 81	Contr Law Crim Law (Tape)	MAJ Riggs L. Wilks	CPT William G. LaSorsa 1591 Swan Drive Tulsa, OK 74120 Office: (918) 583-2624 Home: (918) 585-9320
9	Philadelphia, PA 79th ARCOM/153d Mil Law Cent (includes Norristown) M.G. John W. Wurtz Memorial Army Reserve Center Naval Air Station Willow Grove, PA 19090	17–18 Jan 81	Adm&Civ Law Crim Law (Tape) Int'l Law	LTC Thomas M. Crean MAJ Eugene D. Fryer	CPT Charles M.J. Nester Courthouse Annex 17 N. Church Street West Chester, PA 19380 Office: (215) 431-6940/6958 Home: (215) 326-7983 AND Judith Hecker, AST 153rd Mil Law Cen Willow Grove, PA 19090 Home: (215) 443-1570

	City, Host Unit & Training Site	*Date*	*Subjects*	*Instructors*	*Action Officers Address and Phone No.*
10	Birmingham 121st ARCOM/170, 171, 173d JAG Dets USAR Center 142 W. Valley Avenue Birmingham, AL 35209	24 Jan 81	Adm&Civ Law (Tape) Crim Law Contr Law (Tape)	CPT (P) Larry R. Dean	LTC Edwin "Andy" Strickland 213 Jefferson County Courthouse Birmingham, AL 35263 Office: (205) 325-5688 Home: (205) 322-3936
	Jackson, MS Walter Scott USAR Center Columbia Street Jackson, MS	25 Jan 81	Adm&Civ Law (Tape) Crim Law Contr Law (Tape)	CPT (P) Larry R. Dean	COL Edward Cates 1022 Deposit Guaranty Plaza P.O. Box 2005 Jackson, MS 39205 Office: (601) 948-2333 Home: (601) 362-2263
11	Seattle 6th Mil Law Cen/124th ARCOM Harvey Hall Ft. Lawton, WA 98199	31 Jan 81	Adm&Civ Law Crim Law (Tape)	CPT Robert C. Stuart (USMC)	LTC Thomas J. Kraft 1012 Seattle Tower Seattle, WA 98101 Office: (206) 624-8822 Home: (206) 746-6405
	Vancouver Barracks (includes Portland, Oregon) 104th Div/222 JAG Det Bldg 987 Vancouver Barracks Vancouver, WA 98661	31 Jan 81	Crim Law Adm&Civ Law (Tape)	MAJ Owen D. Basham	CPT Joseph Moore 3493 Aldous Avenue South Salem, OR 97302 Office: (503) 378-4387 Home: (503) 371-6718
	San Franciso 6th Army Conference Room Bldg #35 Presidio of San Franciso San Francisco, CA	1 Feb 81	Adm&Civ Law Crim Law	CPT Robert C. Stuard (USMC) MAJ Owen D. Basham	MAJ Sylvano Marchesi 875 Hamilton Drive Pleasant Hill, CA 94523 Office: (415) 372-2054 Home: (415) 939-1480
	Honolulu HQ IX Corps (Aug) Bruyers Quadrangle, 302 Maluhia Road Fort DeRussy, Honolulu, HI 96815	3-4 Feb 81	Crim Law Adm&Civ Law	CPT Robert C. Stuard (USMC) MAJ Owen D. Basham	COL George W.I. Yim 2445 Ferdinand Avenue Honolulu, HI 96822 Office: (808) 548-2905 Home: (808) 946-4260 AND CPT James H. Pietsch %HQS IX Corps (Aug) ATTN: APIX-JA Ft DeRussy Honolulu, HI 96815 Office: (808) 524-5803

	City, Host Unit & Training Site	*Date*	*Subjects*	*Instructors*	*Action Officers Address and Phone No.*
12	Kansas City 89th ARCOM/113th Mil Law Cent 8th Mil Law Cen Regional Conference University of Missouri at Kansas City School of Law Kansas City, MO	31 Jan–1 Feb 81	Adm&Civ Law Crim Law Int'l Law (Tape) Contr Law (Tape)	MAJ David Schlueter MAJ Dewey E. Helmcamp III	LTC Thomas Graves 6712 East 123 D. Terrace Grandview, MO 64030 Office: (816) 474-0666 Home: (816) 761-0861
13	Los Angels (includes 81st JAG, San Diego) 63d ARCOM/78th Mil Law Cen Antes Restaurant 729 South Palos Verdes San Pedro, CA 90731 (213-832-5375)	7 Feb 81	Crim Law (Tape) Int'l Law Adm&Civ Law	CPT Michelle Brown MAJ Bryan H. Schempf	LTC Cliff Larson 704 LaMirada San Marino, CA 91108 Office: (213) 688-4669 Home: (213) 284-4180 AND W.O. Leon Bennett % 78th JAG Det, Bldg 32 Fort MacArthur, CA 90731 Office: (213) 831-7049/7305
	Tucson 220th JAG Det (includes 219th JAG) Tucson USAR Center 1750 South 29th Street Tucson, AZ	8 Feb 81	Crim Law (Tape) Adm&Civ Law	MAJ Bryan H. Schempf	MAJ Harold L. Dale % SJA Office Ft Huachuca, AZ 85613 Office: (602) 538-3181 Home: (602) 378-6027
	Albuquerque 210th JAG Det USAR Center, 400 Wyoming Blvd Albuquerque, NM	8 Feb 81	Int'l Law Adm&Civ Law (Tape)	CPT Michelle Brown	COL John F. McNett 3728 Camino Capistrano N.E. Albuquerque, NM 87111 Office: (505) 844-7265 Home: (505) 298-4760
14	Atlanta 81st ARCOM/213th Mil Law Cen Regional Conference (includes units in northern Florida) Airport Ramada Inn 845 N. Central Avenue Hapeville, GA 30354	21–22 Feb 81	Adm&Civ Law Crim Law Int'l Law (Tape) Contr Law (Tape)	CPT Paul "Ben" Anderson CPT (P) Glen D. Lause	MAJ Thomas Raiford, Jr. 3395 N.E. Expressway Atlanta, GA 30341 Office: (404) 455-0860 Home: (404) 921-1801 AND

	City, Host Unit & Training Site	*Date*	*Subjects*	*Instructors*	*Action Officers Address and Phone No.*
					CPT Michael D. Anderson, Asst D.A. Clayton County Courthouse Jonesboro, GA 30236 Office: (404) 478-9911, ext. 260 Home: (404) 351-6952
15	Washington, DC 10th Mil Law Cen/97th ARCOM/310th TAACOM Southern Maryland Memorial USAR Center Dower House Road Washington, D.C. 20315	28 Feb–1 Mar 81	Adm&Civ Law (Tape) Crim Law (Tape) Contr Law Int'l Law	LTC Daniel A. Kile CPT H. Wayne Elliott	LTC George R. Borsari 6107 Princeton Avenue Glen Echo, MD 20768 Office: (202) 296-8900 Home: (301) 229-4555
	San Jan, PR Conference Room, HQ PRARNG San Juan, PR	2–3 Mar 81	Crim Law (Tape) Contr Law Int'l Law	LTC Daniel A. Kile CPT H. Wayne Elliott	MAJ Antonio Montalvo P.O. Box 72 San Juan, PR 00902 Office: (809) 754-7930 Home: (809) 782-8985
16	Denver 110th, 116th, 120th JAG Dets Quade Hall, FAMC Denver, CO 80240	28 Feb 81	Adm&Civ Law (Tape) Contr Law Crim Law	CPT (P) James H. Rosenblatt LTC Herbert J. Green	LTC Stevens P. Kinney II 1718 Gaylord Street Denver, CO 80206 Office: (303) 320-1005 Home: (303 422-4637
	Salt Lake City 87th Mil Law Cen (includes 86th JAG Det Boise, ID) Bldg 102 Ft. Douglas, UT 84113	1 Mar 81	Adm&Civ Law (Tape) Contr Law Crim Law	CPT (P) James H. Rosenblatt LTC Herbert J. Green	CPT R.H. Nixon P.O. Box 17111 Salt Lake City, UT 84117 Office: (801) 535-5500/5300 Home: (801) 278-5897
17	San Antonio 90th ARCOM/1st Mil Law Cen USAR Center 2010 Harry Wurzback Road San Antonio, TX 78209	7 Mar 81	Adm&Civ Law Crim Law (Tape)	MAJ Joseph C. Fowler, Jr.	LTC John Compere 2000 Frost Bank Tower San Antonio, TX 78205 Office: (512) 225-3031 Home: (512) 824-7162

	City, Host Unit & Training Site	*Date*	*Subjects*	*Instructors*	*Action Officers Address and Phone No.*
18	Richmond, VA USAR Center 1305 Sherwood Avenue Richmon, VA	14 Mar 81	Contr Law Adm&Civ Law (Tape)	MAJ Riggs L. Wilks	LTC Samuel T. Brick, Jr. 2510 Cavendish Drive Alexandria, VA 22308 Office: (202) 697-1370 Home: (703) 780-9495
	Miami (includes Tampa/St. Petersburg) Student Union Building University of Miami Coral Gables, FL	15 Mar 81	Contr Law Adm&Civ Law (Tape)	MAJ Riggs L. Wilks	LTC Lawrence G. Lilly Special Attorney, IRS Room 1520, Federal Office Bldg 51 S.W. First Avenue Miami, FL 33130 Office: (305) 350-4720 Home: (305) 253-9450
19	Harrisburg New Cumberland Army Depot New Cumberland, PA	21 Mar 81	Crim Law (Tape) Adm&Civ Law Int'l Law	MAJ Phillip F. Koren MAJ Thomas P. DeBerry	CPT Peter J. Curry 827 Briarwood Lane Camp Hill, PA 17011 Office: (717) 255-7637 Home: (717) 761-0987
	Pittsburgh 99th ARCOM/42d Mil Law Cen Malcolm Hay USAR Center 950 Saw Mill Run Blvd Pittsburgh, PA 15226	22 Mar 81	Crim Law (Tape) Adm&Civ Law Int'l Law	MAJ Phillip F. Koren MAJ Thomas P. DeBerry	CPT Ernest B. Orsatti 2000 Lawyers Bldg Pittsburgh, PA 15219 Office: (412) 281-3850 Home: (412) 367-1027
20	New Orleans 2d Military Law Cen (includes 31st JAG, Baton Rouge) USAR Center, 5010 Leroy Johnson Drive New Orleans, LA 70146	28 Mar 81	Adm&Civ Law Int'l Law Crim Law (Tape)	MAJ Walter B. Huffman MAJ David Dowell	CPT H. Bruce Shreeves One Shell Square, 43rd Floor New Orleans, LA 70139 Office: (504) 522-3030 Home: (504) 283-8629
	Memphis 188th/191st JAG Det USAR Center, 360 W. California Avenue Memphis, TN 38106	29 Mar 81	Adm&Civ Law Crim Law (Tape) Contr Law (Tape)	MAJ Walter B. Huffman	LTC Robert G. Drewry 251 Adams Street Memphis, TN 38103 Office: (901) 526-0542 Home: (901) 726-4753

	City, Host Unit & Training Site	*Date*	*Subjects*	*Instructors*	*Action Officers Address and Phone No.*
	Oklahoma City 33d/34th JAG Det USAR Center 2100 N.E. 37th Street Oklahoma City, OK 73111	29 Mar 81	Int'l Law Crim Law (Tape)	MAJ David Dowell	MAJ William H. Sullivan 11116 Rock Ridge Road Oklahoma City, OK 73120 Office: (405) 521-0014/0304 Home: (405) 755-0485
21	Columbus, OH 83d USARCOM/9th Mil Law Cen Ohio Regional Conference (includes Cleveland and Cincinnati JAG personnel) Conference Room, HQS 83rd ARCOM Bldg 306, Defense Construction Supply Center Columbus, OH	4-5 Apr 81	Crim Law (4th only) Adm&Civ Law (4-5)	MAJ Owen Basham CPT John F. Joyce	MAJ Michael C. Matuska 1709 Hansen Avenue Columbus, OH 43224 Office: (614) 222-8938 Home: (614) 267-3374
	Louisville, KY 100th Div (Tng)/147th/148th JAG Det (includes 143d JAG, Lexington) Hangar #7, Bowman Field Louisville, KY 40205	5 Apr 81	Crim Law Contr Law (Tape)	MAJ Owen Basham	MAJ Robert Harrison Route 4 Scottsville, KY 42164 Office: (502) 237-4522 Home: (502) 622-4838
22	Norfolk, VA 149th JAG Det Norfolk USAR Center, #1 East 29th and Gazel Street Norfolk, VA 23504	4 Apr 81	Crim Law	CPT Joseph E. Ross	LTC John M. Cloud 214 Executive Bldg JANAF Shopping Center Norfolk, VA 23502 Office: (804) 461-6803/2316 Home: (804) 428-0822

Army Law Library Service (ALLS)

Major Michael A. Haas, Combat Developments Officer, Developments, Doctrine and Literature Department

1. *Funding.* ALLS received additional funding in September which will enable it to fill essentially all orders received during FY 80. ALLS will not purchase publications originally designated for local purchase. In case of duplicate purchases, libraries should advise ALLS of that fact, then return the extra set of materials to the publisher for proper credit. ALLS is expected to receive sufficient funding for FY 81 and beyond. Direct contact with ALLS concerning specific purchases is encouraged. Telephone numbers are: Autovon 274-7110, then ask for commercial number 293-4382; FTS 938-1208; Commercial (804) 293-4382.

2. *Consolidation.* Although ALLS may receive its requested funding in the future, inflation and new purchases make our book acquisition more difficult each year. An effort is now being made to examine those situations where multiple libraries exist on one installation. Staff judge advocates on posts with more than one library should except requests to examine the feasibility of consolidation. Such staff judge advocates should coordinate with each other and commence consolidation efforts. Other libraries will be asked to examine purchases to insure all material is needed by that office.

3. ALLS libraries are reminded of the following purchase changes:

a. ALLS will update only one law encyclopedia per library or small post. Libraries with multiple encyclopedias must choose the one ALLS will update.

b. McBride and Wachtel, *Government Contracts* will be replaced with Nash and Cibinic *Federal Procurement Law.*

c. To assist in using the Military Rules of Evidence, Saltzburg and Redden *Federal Rules of Evidence,* 2d ed. and Federal Rules of Evidence News have been ordered for libraries engaged in criminal law practice. Weinstein's *Evidence* is replacing *Wigmore on Evidence.*

Dining-In

The Judge Advocate General's Corps celebrated its two hundred and fifth anniversary on 25 July 1980 by conducting a Dining-In at the Fort McNair Officers' Club. Major General Alton H. Harvey was President of the Mess.

One hundred and forty-two officers and the Sergeant Major of the Judge Advocate General's Corps joined their guests: General Edward C. Meyer, Chief of Staff of the Army, and Major General William Berkman, Chief of the US Army Reserve. General Meyer was the Guest of Honor for the second year. The Dining-In, hosted by Contract Appeals Division, Office of The Judge Advocate General, was highly successful. It included the traditional bagpipe introduction, a color guard in Revolutionary era uniforms and an outstanding performance by the Old Guard Fife & Drum Corps under the direction of Sergeant First Class Thomas A. Preston. Mr. Vice, Captain James H. Rosenblatt, The Judge Advocate General's School, made the traditional culinary pronouncements concerning the condition of the evening's food, upheld the rules of the mess and expeditiously assessed reasonable fines when necessary. In all, it was a splendid evening.

Operation of the "Quota System" for JAG School Resident Courses

One important and often overlooked aspect of the JAG School's Continuing Legal Education Program is the administration of the course quota system. Individuals who wish to attend courses, and managers who wish to send students, need to understand how the system works.

The first thing to realize is that students cannot just show up at the JAG School for a

course. Attorneys may consider they are simply returning to the "Home of the Army Lawyer" for additional legal training and figure this is all a JAG matter. Control of school attendance is accomplished through command training and operations channels. Students and managers must use those channels not only to obtain local approval and travel funds, but also to secure a reservation for a seat in the course. This reservation is called a quota.

Each year after the academic schedule has been set, the JAG School determines how many seats will be available for individual courses. The School then allocates these seats to the principal users: TRADOC, FORSCOM, DARCOM and some dozen other organizations. The School assigns spaces on request to overseas Army commands, small Army organizations, and federal agencies. In most cases, all spaces have been distributed about four months before a course begins. Thirty days before a course begins training offices of the major commands notify the School of the names and addresses of students who will attend. The training offices also request additional space if needed and return unused quotas. In turn, the School reallocates quotas to fill the needs of these commands. The School screens the final list of attendees for compliance with course prerequisites and sends out administrative welcome letters. All of this is done through command training channels, not through JAG technical channels. The only exceptions to this are OTJAG, Field Operating Agencies of The Judge Advocate General, overseas SJA offices, and a few other agencies. The point of contact for quotas at the School is Mrs. Kathryn R. Head, AV 274-7110, extension 293-6286.

The School also publishes the list of courses in *The Army Lawyer* and the School's Annual Bulletin. With this information, and even in advance, legal offices budget for courses, identify training requirements and schedule individuals to attend courses. Requests for allocation of quotas should be made to local training offices, which in turn obtain quotas from the major commands. If this generates sufficient demand, the MACOM training offices request more spaces from the JAG School. If spaces are available, the School gives out additional quotas. When a course is full and a waiting list develops, the School reexamines the course to determine if the class can be enlarged or if another session should be offered early in the following academic year.

Training office procedures differ from command to command. The major commands set their own administrative requirements and deadlines. TRADOC, for example, requires notification of student names to them 45 days in advance of a course. They need that time to verify eligibility, to reallocate unused quotas, and to report the names to the School. If names are not submitted in time by the subordinate commands, quota allocations are subject to cancellation. Each subordinate command also has its own requirements. JAG training managers should check into their local training channel procedures and follow those rules to insure that a seat is reserved in the courses their attorneys wish to attend.

This year, 44 different groups of students, over 2,500 individuals, will attend JAG School courses. The School must rely on the major commands to handle the administration of getting those students to Charlottesville. To insure that the existing command channel quota system works, the School will not circumvent the rules set up by those commands. If a command decides to cancel a quota because a name was not submitted in time, the School will not supply a quota directly to the SJA office. To do so would undermine the command authority to control administrative matters within its organization.

This is not a complicated system. It is set up to work with minimal drain on JAG resources. The important thing is to develop a good working relationship with the local training office, follow their procedures, budget and plan in advance.

CLE News

1. State Bar Membership

It is the individual responsibility of each judge advocate to stay informed of the requirements of his or her state bar association. Some states that previously waived annual membership dues for attorneys in the military service now require payment of these dues. Other states have instituted integrated bars with requirements of current membership. The judge advocate should insure that his or her state bar association has a current mailing address to keep him or her advised of changes in membership requirements. The breakdown in communication between the individual judge advocate and his or her bar can have serious effects upon bar membership. There has been at least one instance where a state bar terminated the membership of a number of military attorneys for nonpayment of dues by *ex parte* court orders of which Army judge advocates were unaware.

2. Mandatory Continuing Legal Education

Ten states now provide for mandatory continuing legal education. Staying abreast of the requirements of state bars is the responsibility of the individual judge advocate. Any questions a judge advocate may have concerning his or her state's CLE requirements must be addressed directly to the state bar association. It should be noted that all of the states which have CLE requirements recognize courses taught by TJAGSA, Charlottesville, VA.

By permission of the Federal Bar Association, a chart is set forth below which details the current status of mandatory continuing legal education throughout the 50 states. This chart was prepared by Colonel Charles M. Munnecke, Chairperson, Admission to Practice and Recertification Committee of the Council on the Federal Lawyer, and was first published in *Federal Bar News*, Volume 27, Number 6, June 1980. The chart was updated by Colonel Munnecke in August 1980.

STATUS OF MANDATORY CONTINUING LEGAL EDUCATION (MCLE) — RECERTIFICATION

	1	2a	2b	3	4	5	Remarks
Alabama				x			
Alaska				x			
Arizona				x			
Arkansas						x 1979	
California					x		
Colorado	8/78						45 hrs., 3 yrs.-alt. course recog.
Connecticut					x		
Delaware				x			
Dist. of Col.					x		
Florida					x		
Georgia					x		
Hawaii				x			
Idaho	11/78						30 hrs., 3 yrs.-alt. courses
Illinois					x		
Indiana				x			
Iowa	11/25/75						15 hrs. per yr.-alt. courses
Kansas			x				
Kentucky	7/1/78*						award certificate issued for 45 hrs.
Louisiana				x			
Maine				x			
Maryland						3/78	
Massachusetts					x		
Michigan						9/76	
Minnesota	11/6/75						45 hrs. 3 yrs.-alt. courses
Mississippi					x		
Missouri			x				
Montana					x		
Nebraska				x			
Nevada		x					hearings held Jan. 1980
New Hampshire		x					
New Jersey					x		
New Mexico					x		
New York					x		
North Carolina					x		
North Dakota	1/1/78						45 hrs. 3 yrs.-alt. courses
Ohio				x			
Oklahoma				x			
Oregon				x			
Pennsylvania						7/79	
Rhode Island				x			
South Carolina	1979						
South Dakota					x		
Tennessee			x	x			
Texas							
Utah						1/78	Extremely active vol. CLE
Vermont					x		
Virginia						9/77	Excellent vol. CLE program
Washington	11/29/76						15 hrs. per yr.-rules provide for non-resid. courses
West Virginia					x		
Wisconsin	6/29/76						15 hrs. per yr.
Wyoming	12/6/77						15 hrs. per yr.-alt. courses
TOTAL	10	2	3	14	16	6	

*Kentucky program is voluntary only.

SUMMARY (as of 8/1/80):
1. Rules Adopted (10): Iowa, Minnesota, Wisconsin, Washington, North Dakota, Wyoming, Colorado, Kentucky, South Carolina, Idaho
2a. Awaiting Bar Action (2): Nevada, New Hampshire
2b. Awaiting Court Action (3): Kansas, Missouri, Tennessee
3. Under Study (14): Alabama, Alaska, Arizona, Delaware, Hawaii, Indiana, Louisiana, Maine, Nebraska, Ohio, Oklahoma, Oregon, Rhode Island, Texas.
4. No Action (16): As indicated above
5. Rejected (6): Arkansas, Maryland, Michigan, Pennsylvania, Utah, Virginia

10 states (Col. 1) provide for Mandatory Continuing Legal Education (MCLE). KY so listed, has a "voluntary" program, however, a certificate of completion is provided, which would appear to approach a mandatory requirement.

In 5 states (Col. 2 & 3) rules have been proposed and await final Bar or Court action.

14 states have rules under consideration in various stages. 6 states have rejected MCLE. It appears that a very well attended and comprehensive voluntary program meets their requirements. From the start of the MCLE program, we have been concerned with the fact that the government attorney is generally away from his admission state, solely by reason of his employment, hence a requirement of resident courses might be impossible or at best expensive and travel consuming. The FBA was concerned with alternate courses, (i.e., video tapes or local seminars, etc.), in lieu of resident courses; working with the JAG's of the services, the attorney general, and civil service, a joint committee on recertification was formed and is still in operation. We are pleased to state that Bar Associations have been most cooperative and alternate course are recognized in the rules or in practice.

3. TJAGSA CLE Courses

November 4-7: 12th Fiscal Law (5F-F12).

November 17-21: 57th Senior Officer Legal Orientation (5F-F1).

November 17-21: 15th Law of War Workshop (5F-F42).

December 4-6: USAR JAGC Conference.

December 8-12: 8th Advanced Administrative Law (5F-F25).

December 8-19: 86th Contract Attorneys Course (5F-F10).

December 15-17: 5th Government Information Practices (5F-F28).

January 5-9: 16th Law of War Workshop (5F-F42).

January 5-9: 11th Contract Attorneys Advanced (5F-F11).

January 12-16: 2nd Negotiations, Changes, and Terminations (5F-F14).

January 19-23: 8th Legal Assistance (5F-F23).

January 26-30: 58th Senior Officer Legal Orientation (5F-F1).

February 2-5: 10th Environmental Law (5F-F27).

February 2-Apr 3: 9th Basic Course (5-27-C20).

February 9-13: 9th Defense Trial Advocacy (5F-F34).

February 18-20: 3d CITA Workshop (TBD).

February 23-27: 2nd Prosecution Tiral Advocacy (5F-F32).

March 2-6: 20th Federal Labor Relations (5F-F22).

March 9-20: 87th Contract Attorneys (5F-F10).

April 6-10: 59th Senior Officer Legal Orientation (5F-F1).

April 13-14: 3d U.S. Magistrate Workshop (5F-F53).

April 27-May 1: 11th Staff Judge Advocate Orientation (5F-F52).

May 4-8: 60th Senior Officer Legal Orientation (Army War College) (5F-F1).

May 4-8: 3d Military Lawyer's Assistant (512-71D20/50).

May 11-15: 1st Administrative Law for Military Installations (TBD).

May 18-June 5: 22nd Military Judge (5F-F33).

June 1-12: 88th Contract Attorneys (5F-F10).

June 8-12: 61st Senior Officer Legal Orientation (5F-F1).

June 15-26: JAGSO Reserve Training.

July 6-17: JAGC RC CGSC

July 6-17: JAGC BOAC (Phase IV).

July 20-31: 89th Contract Attorneys (5F-F10).

July 20-August 7: 23d Military Judge Course (5F-F33).

August 3-October 2: 96th Basic Course (5-27-C20).

August 10-14: 62nd Senior Officer Legal Orientation (5F-F1).

August 17-May 22, 1982: 30th Graduate Course (5-27-C22).

August 24-26: 5th Criminal Law New Developments (5F-F35).

September 8-11: 13th Fiscal Law (5F-F12).

September 21-25: 17th Law of War Workshop (5F-F42).

September 28-October 2: 63d Senior Officer Legal Orientation (5F-F1).

4. Civilian Sponsored CLE Courses

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ALIABA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ATLA: The Association of Trial Lawyers of America, 20 Garden Street, Cambridge, MA 02138.

BCGI: Brandon Consulting Group, Inc., 1775 Broadway, New York, NY 10019.

BNA: The Bureau of National Affairs Inc., 1231 25th Street, N.W., Washington, DC 20037.

CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638-0252.

FJC: The Federal Judicial Center, Dolly Madison House, 1520 H Street, N.W., Washington, DC 20003.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GCP: Government Contracts Program, George Washington University Law Center, Washington, DC

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

IPT: Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.

KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.

LSBA: Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.

MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

MOB: The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65101.

NCAJ: National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.

NCATL: North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.

NCCDL: National College of Criminal Defense Lawyers and Public Defenders, Bates Collge of Law, University of Houston, Houston, TX 77004.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NCJFCJ: National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.

NCLE: Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.

NDAA: National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.

NITA: National Institute for Trial Advocacy, University of Minnesota Law School, Minneapolis, MN 55455.

NJC: National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.

NPI: National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

NYSBA: New York State Bar Association, One Elk Street, Albany, NY 12207.

NYSTLA: New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.

NYULT: New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PATLA: Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.

PBI: Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

TBI: The Bankruptcy Institute, P.O. Box 1601, Grand Central Station, New York, NY 10017.

UDCL: University of Denver College of Law, 200 West 14th Avenue, Denver, CO 80204.

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

January

8-9: PLI, Drafting Documents in Plain Language, New York City, NY.

8-9: PLI, Income Taxation of Estates & Trusts, New York City, NY.

9-10: LSBA, Criminal Law Seminar, New Orleans, LA.

11-16: NCDA, Prosecutor's Office Administrator Course, Houston, TX.

12-16: UMLC, Estate Planning, Miami Beach, FL.

14-16: FJC, Bankruptcy Judges Seminar, San Diego, CA.

15-16: PLI, Advanced Antitrust Seminar, Los Angeles, CA.

15-16: CALM, Structuring the Future for Your Firm Its Partner, New York City, NY.

22-23: PLI, Criminal Advocacy: Post Conviction Alternatives, New York City, NY.

22-23: ALIABA, Foreign Investment in U.S. Real Estate, Washington, DC.

22-24: ALIABA, Business Reorganizations Under the Bankruptcy Code, Phoenix, AZ.

22-24: PLI, Product Liability of Manufacturers, Los Angeles, CA.

23: GICLE, ERISA; Pension Profit Sharing and Deferred Comp. Planning, Atlanta, GA.

26-28: FJC, Federal Defenders Seminar, San Diego, CA.

30: GICLE, Condemnation Law, Atlanta, GA.

Current Materials of Interest

1. Articles

Wake Forest Law Review, Notes, Criminal Procedure—Waiver of Miranda Rights, Vol 16, April 1980, Number 2.

Boyer, Beverly J., *Group Term Insurance: Current Estate and Tax Problems Under Internal Revenue Code Section 2035*, 63 Marquette L. Rev. 275 (1979).

Westmoreland, William C., General, and Major General George S. Prugh, (Formerly Chief of Staff, US Army and formerly, TJAG, US Army), *Judges in Command: The Judicialized Uniform Code of Military Justice in Combat*, Vol. 3, No. 1 Harvard Journal of Law and Public Policy 1 (1980).

2. Current Messages and Regulations

The following lists of recent messages and changes to selected regulations is furnished for your information in keeping your reference materials up to date. All offices may not have a need for and may not have been on distribution for some of the messages and/or regulations listed.

a. Messages

DTG	*SUBJECT*	*PROPONENT*
081900Z Sep 80	Additional Funding for ALLS	TJAGSA-JAGS-DDS

b. Changes to Regulations

NUMBER	*TITLE*	*CHANGE*	*DATE*
AR 1-115	Superseded by AR 27-5, Aug 80		
AR 27-20	Claims	16	15 Sep 80
AR 37-20	Administrative Control of Appropriated Funds		1 Aug 80

NUMBER	*TITLE*	*CHANGE*	*DATE*
AR 135-91	Service Obligations, Methods of Fulfillment, Participation Requirements and Enforcement procedures	6	1 Aug 80
AR 135-91	Service Obligations, Methods of Fulfillment, Participation Requirements and Enforcement Procedures	I01	1 Aug 80
AR 135-155	Promotion of Commissioned Officers and Warrant Officers other than General Officers	902	29 Aug 80
AR 135-175	Separation of Officers	5	15 Sep 80
AR 140-158	Enlisted Personnel Classification, Promotion and Reduction	I01	2 Jul 80
AR 140-158	Enlisted Personnel Classification, Promotion and Reduction	I02	6 Aug 80
AR 600-25	Salutes, Honors, and Visits of Courtesy	8	15 Aug 80
AR 600-200	Enlisted Personnel Management System	915	17 Aug 80
AR 612-10	Reassignment Processing and Army Sponsorship and Orientation Program	I03	18 Aug 80
AR 624-100	Promotion of Officers on Active Duty	1	15 Sep 80
AR 670-1	Wear and Appearance of Army Uniforms and Insignia	I07	28 Jul 80
AR 690-300	Civilian Personnel Employment	2	15 Aug 80
DA Pam 27-17	Procedural Guide for Article 32(b) Investigating Officer		15 May 80
DA Pam 27-25	Prisoner of War: Rights and Obligations Under the Geneva Convention		1 Mar 80
DA Pam 550-34	Area Handbook for Jordan (Supersedes 1974 edition)		1979 edition

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

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